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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III—SECTION 1

Notifications issued by the High Courts, the Comptroller and Auditor General, the Union Public Service Commission, the Indian Government Railways, and by Attached and Subordinate Offices of the Government of India

MINISTRY OF HOME AFFAIRS
Intelligence Bureau

NOTIFICATION

New Delhi-2, the 14th August 1951

No. 7/Est/50(56).—In partial modification of this Bureau's Notification No. 7/Ests/50(56), dated the 7th May, 1951, Mr. J. P. Sharma, a temporary Deputy Superintendent of Police in the Bureau, was granted leave on average pay for eighteen days from the 5th September, 1950 to the 22nd September, 1950 with permission to prefix Sunday the 3rd and Closed Holiday on the 4th and suffix Sunday the 23rd September and closed holiday on the 24th September, 1950 to the leave.

T. R. SUBHEDAR,
for *Director.*

DEPARTMENT OF EXPLOSIVES

NOTIFICATION

New Delhi, the 14th August 1951

No. G-15(32)-2.—Shri K. Sankaran, B.A., M.Sc., relinquished charge of the Office of the Assistant Inspector of Explosives, South Circle, Madras, on the afternoon of 24th July 1951. He took over charge of the Office of Inspector of Explosives, New Delhi, on the afternoon of 30th July 1951.

M. K. MAITRA,
Chief Inspector of Explosives in India.

INDIAN AUDIT & ACCOUNTS DEPARTMENT
Leave and Appointments

NOTIFICATIONS

New Delhi. the 14th August 1951

No. 3345-GE/M-4/PF.—On return from leave Sri V. R. Mahadevan, an officer of the Indian Audit and Accounts Service, has been reposted as Assistant Comptroller and Auditor General (Admn.) in the office of the Comptroller and Auditor General of India with effect from the 7th August, 1951.

No. 3347-GE/A-6/PF.—Sri R. Rangaswami Ayyar, an officer of the Emergency Cadre of the Indian Audit and Accounts Service has been granted a further extension of leave on average pay for 10 days with effect from 26th July, 1951.

No. 3360-GE/P-3/PF.—Mr. G. H. Po Saw, an officer of the Indian Audit and Accounts Service has been granted leave on average pay for one month with effect from the 1st August, 1951.

No. 3367-GE/B-8/PF.—Shri P. C. Banerji, an officer of the Emergency Cadre of the Indian Audit and Accounts Service, has been granted leave on average pay for one month with effect from the 6th July, 1951.

No. 3371-GE/48-51.—Shri K. N. Bhargava, Deputy Accountant General, Rajasthan, Jaipur has been granted privilege leave with effect from the 21st May, 1951 to 19th June, 1951.

No. 3372-GE/48-51.—Shri A. L. Vyas, Deputy Accountant General, Rajasthan, Jodhpur, has been granted privilege leave for the periods from 13th January 1951 to 27th January 1951, with permission to suffix Sunday the 28th January, 1951. He has also been sanctioned privilege leave from 7th May, 1951 to 21st May, 1951.

No. 3373-GE/36-51.—On return from leave Shri M. G. Desai, an Assistant Accounts Officer in the office of the Accountant General, Bombay, has been reposted in the same capacity with effect from the 1st August, 1951.

No. 3374-GE/36-51.—On return from leave, Shri A. P. Pais, Assistant Examiner, Local Fund Accounts in the office of the Accountant General, Bombay, has been reposted in the same capacity with effect from the 3rd August, 1951.

No. 3375-GE/36-51.—On return from leave, Shri R. J. Bardoliwala, Assistant Accountant General (Senior) in the office of Deputy Accountant General, Baroda, has been reposted in the same capacity with effect from the 30th July 1951.

No. 3423-GE/50-51.—On return from leave, Sri C. Ramaswami Ayyar, has resumed charge of his duties as acting Assistant Accountant General in the office of the Accountant General, Travancore-Cochin, with effect from the 9th June, 1951.

No. 3426-GE/47-51.—Sri S. Venkateswaran, an Assistant Accounts Officer in the office of the Controller of Coal Accounts, Calcutta is granted an extension of leave on average pay for 12 days in continuation of the leave on average pay sanctioned for 2 months and 10 days with effect from the 5th April 1951.

On the return from leave, Sri S. Venkateswaran, is posted as Assistant Accounts Officer in the same office with effect from 27th June, 1951.

No. 3438-GE/R-2/PF.—Sri T. Rajagopalan, an officer of the temporary Emergency Cadre of the Indian Audit and Accounts Service has been posted as Examiner, Outside Audit Department, in the office of the Accountant General, Madras with effect from the 23rd July, 1951.

No. 3440-GE/I-2/PF.—Sri T. K. Anantaraman, an officer of the temporary Emergency Cadre of the Indian Audit and Accounts Service has been posted as Deputy Accountant General (Senior) in the office of the Accountant General, Madras with effect from the 23rd July, 1951.

No. 3442-GE/K-3/PF.—On return from leave, Shri Keshab Dayal, an officer of the Indian Audit & Accounts Service has been reposted as Chief Auditor, Bengal

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Nagpur and Assam Railway with effect from the 7th August, 1951.

No. 3447-GE/R-9/PF.—Shri V. A. T. Rao, an officer of the Emergency Cadre of the Indian Audit and Accounts Service, has been granted leave on average pay for 1 month and 15 days with effect from 17th July, 1951.

No. 3448-GE/401-51-Pt. II.—On return from leave, Shri R. D. Makkar, an Assistant Accounts Officer in the office of the Accountant General, Punjab (India) has been posted as Assistant Accounts Officer in the Indian Audit and Accounts Service, Training School, Simla, with effect from the 23rd July 1951. The unexpired portion of his leave from 23rd July, 1951 to 4th September, 1951 has been cancelled.

No. 3382-GE/M-6/PF.—Sri C. Sankara Menon has been appointed as probationer in the Indian Audit and Accounts Service and attached to the I.A. & A.S. Training School at Simla with effect from the 30th July, 1951.

No. 3388-GE/R-14/PF.—Sri Mugur Ramaswamy has been appointed as probationer in the Indian Audit and Accounts Service Training School at Simla with effect from the 31st July, 1951.

No. 3390-GE/D-4/PF.—Sri Yashbir Saran Das has been appointed as probationer in the Indian Audit and Accounts Service, and attached to the Indian Audit and Accounts Service Training School at Simla with effect from the 30th July, 1951.

No. 3392-GE/G-6/PF.—Mr. T. M. George has been appointed probationer in the Indian Audit and Accounts Service and attached to the Indian Audit and Accounts Service Training School at Simla with effect from the 31st July, 1951.

No. 3395-GE/S-18/PF.—Shri Kuldeva Narayan Singh has been appointed as probationer in the Indian Audit and Accounts Service and attached to the Indian Audit and Accounts Service Training School at Simla with effect from the 30th July, 1951.

P. D. PANDE,
Deputy Comptroller & Auditor General.

Advertisement

Applications are invited for posts of apprentices to the Subordinate Accounts Service of the Indian Audit Department, from citizens of India. Persons who have migrated from Pakistan with the intention of permanently settling in India are also eligible, subject to the production of a certificate of eligibility from the Ministry of Home Affairs, Government of India. Provided suitable candidates are forthcoming about 75 persons will be selected.

2. Applicants should be Graduates with brilliant University career. Bachelors and Masters of Commerce and Chartered Accountants may also apply. Preference will be given to candidates who have sat for the Combined Competitive Examination for the Indian Administrative Service and other allied Central Services and who, though unsuccessful, have showed a high degree of proficiency and possess high academic qualifications.

3. Applicants should not have exceeded the age of 25 on the 15th November, 1951. The age limit is relaxable by 3 years for scheduled castes, Tribal and aboriginal communities candidates and displaced persons, and by 4 years in the case of Registered and Chartered Accountants. A scheduled caste candidate must produce a certificate from the District Officer of the district in which his parents ordinarily reside to the effect that he belongs to one of the scheduled castes.

4. Selected apprentices will be given a pay of Rs. 150/- p.m. plus the usual allowances admissible under the rules in force. They will be ordinarily on training for 2 years and on passing the prescribed departmental examinations they will be absorbed in the Subordinate Accounts Service in the scale of Rs. 200—15—380—E.B.—20—500, subject to good conduct and good work during the apprenticeship.

5. Applications giving the following particulars, accompanied by two testimonials of character by Gazetted Officers or Magistrates, who are not relations, should reach the Comptroller and Auditor General of India. No. 3, Mansingh Road, New Delhi, not later than the 15th September, 1951.

1. Name in full (Block letters).
2. Father's name and occupation.
3. Postal address.
4. Nationality, Religion, language and community.
5. Place and date of birth. (Supported by an attested copy of the Matriculation certificate or School Leaving Certificate showing the date of birth.)
6. Educational qualifications. (Full particulars, including Divisions or marks obtained duly supported by attested copies of certificates.)
7. Year in which the candidate appeared in the All India Competitive test, (the roll number and the marks secured and the position.)
8. Previous experience in any office, if any.

Note.—Applications not supported by the above particulars are liable to be rejected.

Candidates should be prepared to appear, if required, for an interview before a Selection Board.

Those in Government service should forward their applications through proper channel.

CONDITIONS OF APPOINTMENT AS APPRENTICES TO THE SUBORDINATE ACCOUNTS SERVICE OF THE INDIAN AUDIT DEPARTMENT.

1. *Domicile.*—Applicants should be citizens of India. Persons who have migrated from Pakistan with the intention of permanently settling in India or subjects of Nepal or of Sikkim or of a Portuguese or French possession in India are also eligible, but in their case a certificate of eligibility from the Government of India will be necessary for appointment.

2. *Age.*—The age of the applicants should not exceed 25 years on the date specified in the advertisement. Upper age limit is relaxable by 3 years for scheduled castes, tribal and aboriginal communities candidates and displaced persons. In the case of Registered and Chartered Accountants, candidates upto the age of 29 will be considered. All applications should be supported by attested copies of the Matriculation or School Leaving Certificates showing the date of birth.

3. *Qualifications.*—Applicants should be Graduates with brilliant University career. Bachelors or Masters of Commerce and Registered or Chartered Accountants may also apply. Preference will be given to candidates who have appeared in the Combined Competitive Examination for the Indian Administrative Service and other Class I Central Services and who, though unsuccessful in securing an appointment, have shown a high degree of proficiency and possess high academic qualifications.

4. *Form of application.*—All applications should state the following particulars:—

(i) Name in full (Block Letters).

(ii) Father's name, occupation and address.

(iii) Postal address.

(iv) Religion, language and community.

(v) Place and date of birth.

(vi) Educational qualifications (giving full particulars of the Degree obtained and divisions or marks secured, duly supported by attested copies of certificates).

If a Registered or Chartered Accountant, the year in which he was enrolled and the particulars of past experience should be given.

(vii) Year in which the candidate appeared in the All-India competitive test, the roll number and the marks secured and the position.

(viii) Previous experience in any Government Office, if any.

5. *Testimonials.*—Applications should be accompanied by two testimonials of character by Gazetted Officers or Magistrates who are not related to the applicant. A scheduled caste candidate must produce a certificate in original that he belongs to one of the scheduled castes, from the District Officer of the district in which his parents (or surviving parents) ordinarily reside on the date of his application, or if both his parents are dead, of the district in which he himself ordinarily resides otherwise than for the purpose of his own education.

6. *Last date for applications.*—All applications must reach the office of the Comptroller and Auditor General of India, Gorton Castle, Simla, not later than the date specified in the advertisement.

7. *Interviews.*—Candidates should be prepared to appear, if required, for an interview before a Selection Board at any place which might be notified to them.

8. *Period of Training.*—Selected apprentices will be given a preliminary training for a period of about twelve months in the office of the Accountant General, Madras, or in any other selected place. This period may be increased or decreased with due regard to the progress made there. On the termination of the preliminary training, they will be posted for further training to the Accounts and Audit Offices selected by the Comptroller and Auditor General of India. As far as possible, the postings will be in the offices in which they will be eventually confirmed, if they qualify.

9. *Departmental Examinations and confirmations.*—The following general instructions have been laid down to regulate the training, examination and confirmation of the apprentices.

(a) Except when an apprentice is allotted and posted to the Defence Audit Branch after the preliminary training [in which case, sub-clause (c) below will apply], an apprentice will be required on the satisfactory completion of the preliminary training to appear for Part I of the first S.A.S. Examination of the Civil, Postal, Railway or Commercial Audit Branch, as the case may be, held under the regulations prescribed by the Comptroller and Auditor General. He should pass Part I before he takes Part II of the examination. Subject to the provision in sub-clause (d) below, he will be allowed two chances for each part of the examination. He will be eligible for confirmation in the S.A.S. on passing both parts of the examination, subject to satisfactory reports on his conduct and work generally.

(b) An apprentice is expected to pass both parts of the S.A.S. examination within a period not exceeding three years from the commencement of apprenticeship in order to be eligible for confirmation.

(c) If an apprentice is allotted and posted to the Defence Audit Branch on the satisfactory completion of the preliminary training, he will be required to appear for Parts I and II of the S.A.S. Examination held under the regulations prescribed by the Military Accountant General or such examinations in substitution thereof as may be prescribed by the Comptroller and Auditor General. He should pass Part I before he takes Part II of the examination. He will normally be allowed two chances for each part of the examination. He will be eligible for confirmation in the S.A.S. on passing both the parts, subject to satisfactory reports on his conduct and work generally.

(d) If an apprentice is unsuccessful at Part I of the S.A.S. Examination within the number of chances ordinarily allowed for it, or having passed Part I is unsuccessful in Part II of the Examination within the number of chances allowed for it, or exhausts the prescribed chances in either of the parts by omission to avail himself of any of the available chances, he shall revert as a clerk or be removed from service. The Comptroller and Auditor General, may, however, if he considers that there are special circumstances justifying the concession allow at his discretion one further chance in either or both of the parts and the apprentice's reversion or removal, as the case may be, shall then occur on his being unsuccessful in the additional attempt or if he fails to utilise the further chance granted.

If he is reverted as a clerk, his pay and position in the clerical grade will be determined by the Comptroller and Auditor General.

10. *Posting.*—The province of origin of an apprentice and his desire for posting to a particular province after the preliminary training will be taken into consideration in posting, but no assurance can be held out. On confirmation, a candidate will ordinarily be required to serve in the Accounts or Audit office in which he is confirmed. He will, however, be liable to transfer to any office under the control of the Comptroller and Auditor General of India. Candidates will also be liable to spells of overseas service for Audit and Accounts work.

11. *Execution of a bond.*—All apprentices at the time of appointment will be required to give an undertaking to the effect that during the period of their apprenticeship they will not apply for any appointment elsewhere or apply for any examination in respect of other posts under Government.

12. *Scals of pay.*—During training and so long as they are not confirmed, the apprentices will get a pay of Rs. 150/- p.m. plus the dearness and other allowances at the scales fixed by the Government of India from time to time. With effect from the date of confirmation in the S.A.S., they will be eligible for pay in the scale of Rs. 200—15—380—E.B.—20—500. If they are sent overseas, they will be granted extra allowances in accordance with the scales prescribed by Government.

MINISTRY OF DEFENCE

Directorate General, Ordnance Factories

NOTIFICATION

Calcutta, the 9th August 1951

No. 58/51/G.—Mr. J. K. Lahiri, offg. A.W.M., Rifle Factory, Ishapore, is appointed to officiate as T.S.O. in the Directorate General, Ordnance Factories, 26th June, 1951, *vice* Mr. B. B. Dutta promoted.

K. K. FRAMJI,
Director General,
Ordnance Factories.

MINISTRY OF LABOUR

Office of the Regional Director, Resettlement and Employment

NOTIFICATION

Madras, the 7th August 1951

No. E-6/13961/51.—Shri P. Kesava Rao, Principal, Industrial Training Institute, Kakinada has been granted earned leave for 25 days with effect from 7th July 1951. He has rejoined duty in the same post after the expiry of the leave on 1st August 1951.

S. A. QADIR,
Regional Director.

IN THE HONOURABLE LABOUR APPELLATE TRIBUNAL OF INDIA

NOTIFICATION

Calcutta, the 4th August 1951

No. LA.6(2)/ —The following decisions of the Tribunal are published for general information :—

1. Appeal Nos. (Bom) 101 and 113 of 1951.
2. Appeal Nos. (Bom) 73, 74, 77, 78, 79, 83 and 93 of 1951.
3. Appeal No. (Bom) 110 of 1951.

J. N. MAJUMDAR,
Chairman,
Labour Appellate Tribunal of India.

Appeal (Bom) No. 101 of 1951

Burmah-Shell Oil Storage & Distributing Company of India Limited, of 'Burmah-Shell House', Esplanade, Madras—*Appellants.*

versus

The Workmen employed by the Appellants in their Branch Office at 'Burmah-Shell House', Esplanade, Madras, represented by Burmah-Shell Employees' Union of 6, Sydoji Lane, Triplicane, Madras—*Respondents.*

Appeal (Bom) No. 113 of 1951

Employees of Burmah-Shell Oil Storage & Distributing Company of India Limited, Madras, represented by Burmah-Shell Employees' Union—*Appellants.*

versus

1. Burmah-Shell Oil Storage & Distributing Company of India Limited, Esplanade, Madras.
2. Non-members of Burmah-Shell Employees' Union, Madras, employed by Respondent No. 1 at their Branch

Office at Burmah-Shell House, Esplanade, Madras.—*Respondents.*

In the matter of appeals against the award of the Second Industrial Tribunal (Sri T. D. Ramaiya), Madras, in Industrial Dispute No. 24 of 1950, published in the Fort St. George Gazette, Madras on 3rd April 1951.

The 27th day of July 1951.

Present :

Mr. K. P. Lakshmana Rao, President.

Mr. G. P. Mathur, Member.

Appearances .

For the Appellants in Apl. (*Bom*) 101/51 *and for the Respondents in Apl.* (*Bom*) 113/51.—Mr. S. D. Vimadalal, Counsel. Mr. H. W. Norton. Mr. S. Ganapathy.

For the Respondents in Apl. (*Bom*) 101/51 *and for the Appellants in Apl.* (*Bom*) 113/51.—Mr. S. Guruswami, President, Burmah-Shell Employees' Union, with Mr. N. Ramaswami, General Secretary, Burmah-Shell Employees' Union.

State.—Madras.

Industry.—Minerals & Metals (Oil).

DECISION

By G.O. dated 13th December 1950 the Madras Government referred for adjudication an industrial dispute between the management of Messrs. Burmah-Shell Oil Storage and Distributing Company of India Ltd., Madras, and its employees to the Second Industrial Tribunal, Madras. The reference was with regard to the following matters :—

(1) Fixation of bonus payable for the years 1947, 1948 and 1949.

(2) Fixation of scales of pay to all grades of employees.

(3) Dearness allowance.

(4) Family allowance.

(5) Increased leave facilities.

(6) Grant of leave fares to all employees, and

(7) retiring benefits to all employees.

On the 13th March 1951 the said Tribunal gave its award and these two appeals before us 101 and 113/51 are against that award.

2. Appeal No. 101/51 has been filed by the Burmah-Shell Oil Storage and Distributing Company of India Ltd., hereinafter called the company, and relates to the question of bonus, scales of pay, dearness allowance and leave. Appeal No. 113/51 is on behalf of the employees of the said company and they have asked for increasing the amount of bonus awarded by the lower Tribunal, for increasing the rate of dearness allowance and also for family allowance, travelling allowance and retirement benefits.

3. Taking the question of bonus first it appears that the learned Tribunal based its award on the pattern of the award in the case of the Burmah-Shell Oil Storage and Distributing Company of India Ltd., Bombay *v.* its workmen reported in 1950 I.C.R. (Bom), p. 259 which dealt with the bonus for the years 1946, 1947 and 1948. The learned Tribunal observed :

> "Taking into account the amount already paid the Tribunal granted bonus at the rate of 2½ months wages or 5/24th of the annual basic earnings. I am prepared to accept the same rate as fair and reasonable for the years 1947 and 1948. Since I consider that the position in 1949 as disclosed by the evidence submitted to me is fairly and reasonably assimilable to the trading result and financial position of the previous two years I would direct the payment of bonus at the same rate for 1949".

Our attention has been drawn to paragraphs 112 and 113 of the Bombay award aforesaid and it appears from a perusal of these paragraphs that Shri Thakore in that case awarded bonus at the rate of 2½ months' wages for the year 1947 while for the year 1948 it was only 1½ months' wages. We think that the same bonus must be awarded as was awarded to the employees of the same company in Bombay, *viz.*, 2½ months for 1947 and 1½ months for the year 1948. As regards the year 1949 a bonus of 2 months would be just and proper as the same has been allowed to Bombay employees in Appeal No. 56 of 1951.

4. As to the appeal of the workmen on the same point we do not think that any case has been made out for an increase in the quantum of bonus. We would therefore modify the award accordingly.

5. As regards the scales of pay it has been argued with great force on behalf of the company that the emoluments allowed by them including various concessions would compare favourably with any other company and there was no good ground for raising the wages. It is also argued that the standard of living at Bombay is much higher and merely because there was an increase in the scale of salaries of the Bombay employees there was no reason for following suit in Madras. The workmen on the other hand had made a grievance that the company had never disclosed the scales of pay so that they were not in a position to know what increments they were entitled to and when they could reach the maximum pay. The company handed over a statement in a confidential cover and it was stated that every year the case of every workman was taken up and the increment to which he was entitled was usually given unless the committee appointed for the purpose decided otherwise. We however thought that it was unfair that the conditions of service should not be known to the employees and they should be kept in dark about it. We therefore ordered the company to disclose the scales of pay to the respondents which they have done. The objections of the workmen based on the scales of pay are that they do not cover all the categories, for example compounders, lifters, blue-painters, carpenters, etc.; that the Standard Vacuum Oil Company, Madras, gave better pay even before the revision and that the selection grade worked to the prejudice of the workmen in individual cases. After hearing the representatives of the parties we have come to the conclusion that the scale of pay given by the company is in some categories better than that of Standard Vacuum Oil Co., Madras, while in some other categories it is lower and we do not think we would be justified in revising it wholesale so as to put it on a par with the scales of the Standard Vacuum Oil Co., Madras.

6. As regards the *ad hoc* increase of Rs. 10/-, Rs. 5/- and Rs. 4/- as ordered by the lower Tribunal we are of the opinion that it was justified. It is no doubt true that the learned Tribunal remarked :

> "Taking up the question of the adoption of the scales of the Bombay Burmah-Shell Award I agree with the management that it cannot be done, as economic and other conditions are not identical..... It is difficult, however, to say what should be the living wage for a Burmah-Shell worker in Madras, as there is no general agreement upon the factors that should go into the definition of the living wage or upon their individual or relative evaluation".

After these remarks the learned Tribunal says :

> "Since, however, another firm of fairly equal status carrying on similar business in Madras City has granted increases quite recently the demand of the present employees for wage enhancement seems justified to some extent".

He therefore directed the payment of an additional Rs. 10/- per month to all the members of the categories other than service staff mentioned in the award and also an increase of Rs. 4/- at both ends for all the members of the following categories

(1) Attenders.
(2) Watchmen.
(3) Bearers.
(4) Lascars,
(5) Table boys, and
(6) Sweepers and cleaners

and an increase of Rs. 5/- to

(1) Binders,
(2) Head Watchmen.
(3) Head Bearer.
(4) Packer.
(5) Car Driver,
(6) Butler,
(7) Cook, and
(8) Electrician.

7. Having regard to all the circumstances of the case we think that the award of the learned Tribunal is just and proper. As remarked by the learned Tribunal since a firm of equal status carrying on similar business in Madras City granted increases quite recently there is sufficient justification for increasing the scale of pay of the employees of the company in Madras.

8. We are not in a position to consider the case of the categories mentioned on behalf of the employees nor are

impressed by the fact that the Standard Vacuum Oil Co., at Madras were in some cases paying better pay and therefore the appellants must also be made to raise their scales of pay.

9. Mr. Guruswami has pleaded for 100 per cent. neutralization of rise in living index by payment of proportionate dearness allowance. But in no case, to our knowledge, has this been done so far and we think the award of the lower Tribunal is sufficiently generous and must be confirmed.

10. So far as the question of family allowance, travelling allowance and retirement benefits are concerned the appeal on these points will not be competent under section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

11. We therefore dismiss both the appeals with this modification that the bonus for the year 1947 shall be at the rate of 2½ months' basic earnings, for 1948 at the rate of 1½ months' basic earnings and for the year 1949 at the rate of 2 months' basic earnings. This bonus must be paid within 30 days from the date of this decision. We make no order as to costs.

K. P. LAKSHMANA RAO,
President.

G. P. MATHUR,
Member.

Appeal (Bom) No. 73 of 1951

The Lalbhai Tricumlal Mills Co. Ltd., Ahmedabad—*Appellants.*

versus

The Textile Labour Association, Ahmedabad and 6 others—*Respondents.*

Appeal (Bom) No. 74 of 1951

The Ahmedabad Millowners' Association, Ahmedabad and other mills at Ahmedabad—*Appellants.*

versus

The Textile Labour Association, Ahmedabad—*Respondents.*

Appeal (Bom) No. 77 of 1951

The Ahmedabad Shri Ramkrishna Mills Co. Ltd., Ahmedabad—*Appellants.*

versus

The Textile Labour Association, Ahmedabad, and 5 others—*Respondents.*

Appeal (Bom) No. 78 of 1951

The New Maneckchock Spinning & Weaving Co. Ltd., Ahmedabad—*Appellants.*

versus

The Textile Labour Association, Ahmedabad and 5 others—*Respondents.*

Appeal (Bom) No. 79 of 1951)

Shri Vivekanand Mills Ltd., Ahmedabad—*Appellants.*

versus

The Textile Labour Association, Ahmedabad and 5 others—*Respondents.*

Appeal (Bom) No. 83 of 1951

The Textile Labour Association, Ahmedabad—*Appellants.*

versus

(1) The Ahmedabad Millowners' Association, Ahmedabad.
(2) The Ahmedabad Mfg. & Calico Prtg. Co. Ltd. (The Calico & Jubilee Mills), Ahmedabad.
(3) The New Maneckchock Spg. & Wvg. Co. Ltd., Ahmedabad.
(4) The Vivekanand Mills Co. Ltd., Ahmedabad.
(5) The Ahmedabad Shri Ramkrishna Mills Co. Ltd., Ahmedabad.
} *Respondents*

Appeal (Bom) No. 93 of 1951

The Rustom Jehangir Vakil Mills Co. Ltd., Ahmedabad—*Appellants.*

versus

(1) The Textile Labour Association, Ahmedabad.
(2) The Ahmedabad Millowners' Association, Ahmedabad.
} *Respondents*

In the matter of appeals against the award of the Industrial Court (Full Bench), Bombay in Reference (IC) No. 188 of 1949, dated the 8th March 1951.

The 13th day of July 1951.

Present :

Mr. K. P. Lakshmana Rao, President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants in Apl. 73/51—Mr. C. K. Daftari, Advocate General, Bombay and Mr. M. N. Thakore.

For the Respondents in Apl. 73/51.—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh for the Textile Labour Association. Mr. R. J. Kolah with Mr. B. Narayanaswamy for the Millowners' Association. Mr. Manvantroy T. Mehta, Official Liquidator for the National Mills Ltd.

For the Appellants in Apl. 74/51.—Mr. R. J. Kolah with Mr. B. Narayanaswamy. Sheth Chandulal P. Parikh, Chairman, Ahmedabad Millowners' Association. Sheth Amritlal Hargovindas. Mr. M. K. Desai, Secretary, Ahmedabad Millowners' Association.

For the Respondents in Apl. 74/51.—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh, Secretaries, Textile Labour Association.

For the Appellants in Apl. 77/51.—Mr. I. M. Nanavati.

For the Respondents in Apl. 77/51—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh for the Textile Labour Association. Mr. R. J. Kolah with Mr. B. Narayanaswamy for the Millowners' Association. Mr. I. M. Nanavati for the Shri Vivekanand Mills Co. Ltd., and the New Maneckchock Spg. & Wvg. Co. Ltd. Mr. Manvantroy T. Mehta, Official Liquidator for the National Mills Co. Ltd.

For the Appellants in Apl. 78/51.—Mr. I. M. Nanavati.

For the Respondents in Apl. 78/51.—Messrs. S. P. Dave, S. R. Vasavda & N. H. Shaikh for the Textile Labour Association. Mr. R. J. Kolah with Mr. B. Narayanaswamy for the Millowners' Association. Mr. I. M. Nanavati for the Ahmedabad Shri Ramkrishna Mills Co. Ltd. and Shri Vivekanand Mills Co. Ltd. Mr. Manvantroy T. Mehta, Official Liquidator for the National Mills Co. Ltd.

For the Appellants in Apl. 79 of 51.—Mr. I. M. Nanavati.

For the Respondents in Apl. 79/51.—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh for the Textile Labour Association. Mr. R. J. Kolah with Mr. B. Narayanaswamy for the Millowners' Association. Mr. I. M. Nanavati for the Ahmedabad Shri Ramkrishna Mills Co. Ltd., and the New Maneckchock Spg. & Wvg. Co. Ltd. Mr. Manvantroy T. Mehta, Official Liquidator for the National Mills Co. Ltd.

For the Appellants in Apl. 83/51.—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh, Secretaries, Textile Labour Association.

For the Respondents in Apl. 83/51.—Mr. R. J. Kolah with Mr. B. Narayanaswamy. Sheth Chandulal P. Parikh, Chairman, Ahmedabad Millowners' Association. Sheth Amritlal Hargovindas. Mr. M. K. Desai, Secretary, Ahmedabad Millowners' Association.

For the Appellants in Apl. 93/51.—Mr. R. J. Kolah with Mr. B. Narayanaswamy.

For the Respondents in Apl. 93/51.—Messrs. S. P. Dave, S. R. Vasavda and N. H. Shaikh for the Textile Labour Association.

State.—Bombay.

Industry.—Textile (Cotton).

DECISION

These are seven appeals against the award of the Industrial Court, Bombay, dated the 8th March 1951. There was a dispute between the Textile Labour Association, Ahmedabad, and the Cotton Textile Industry, Ahmedabad, relating to the bonus for the year 1949. The reference was made by the Textile Labour Association with regard to all the mills who were at the time of the reference members of the Ahmedabad Millowners' Association under Section 73-A of the Bombay Industrial Relations Act. The Gujerat Ginning and Manufacturing Co. Ltd., had stopped working and the National Mills Company Ltd., was in liquidation and they had thus ceased to be members of the Ahmedabad Millowners' Association, which originally had a membership of f

mills. Five of the mills namely the Ahmedabad Manufacturing and Calico Printing Co. Ltd., and Jubilee Mills, Ahmedabad, Shri Ramkrishna Mills Co. Ltd., Shri Vivekanand Mills Co., the Bharat Suryodaya Mills Co. Ltd., and the New Maneckchock Spg. & Wvg. Co. Ltd., resigned their membership of the Association after the reference was made bringing the number of member mills to 58. Out of these 58 mills, 9 mills named below which are alleged to have made losses expressed a desire that they may be allowed to appear individually and not through the Association. Those 9 mills are—

(1) The Rajnagar Spg. & Wvg. & Mfg. Co. Ltd.

(2) City of Ahmedabad Spg. & Mfg. Co. Ltd.

(3) Kalyan Mills Co. Ltd.

(4) Shrinagar Mills Ltd.

(5) Gujerat Hosiery Factory.

(6) Gujerat Cotton Mills Co. Ltd.

(7) Maheswari Mills Ltd.

(8) Shri Anand Cotton Mills Co. Ltd.

(9) Hathising Mfg. Co. Ltd.

Besides these 9, two other mills namely the Lalbhai Tricumlal Mills Ltd., and the Rustom Jehangir Vakil Mills Co. Ltd., contended that they had made meagre profits which would be reduced to losses if depreciation is taken into account and they also prayed that they may be separately represented and not by the Association. The Association thus represented only 47 out of 65 mills.

2. On the 17th August 1950 the Textile Labour Association applied to the Industrial Court to issue a commission for the scrutiny of the items of expenditure, income, production, sales, etc., appearing in the account books of the 9 companies mentioned above and the Bharat Suryodaya Mills Co. Ltd., in order to find out whether they have really incurred losses. The Industrial Court in spite of the opposition by the other party allowed the said application and ordered the 10 mills aforesaid to furnish certain information. The mills filed an appeal to the Labour Appellate Tribunal which has since been dismissed. But as requested by Mr. Vasavda on behalf of the Textile Labour Association the Industrial Court continued the proceedings against those mills which showed a profit leaving the case of the remaining 10 to be subsequently decided and passed the award dated 8th March 1951 which is the subject matter of this appeal.

3. The Industrial Court ordered all the other 53 mills to pay bonus equivalent to 1/6th of the annual basic wages earned by the employees by the 15th May 1951 subject to the following conditions :—

(1) In the case of women employees, if any, who have been on maternity leave during the year the maternity allowance drawn by them will be included in the earnings for the purpose of calculating the bonus payable.

(2) Persons who are eligible for bonus but who are not in the service of the mills shall be paid, on their claims being submitted within six months of the publication of the award, within one month thereof, provided no such claim can be enforced within a month of the publication.

4. All the parties being dissatisfied with this award seven appeals have been preferred :—Appeal (Bom) No. 74 of 1951 on behalf of the Millowners' Association. Another Appeal (Bom) No. 83 of 1951 on behalf of the Textile Labour Association. The other five namely, Appeals (Bom) Nos. 73, 77, 78, 79 and 93 are by individual mills *viz.*, (1) The Lalbhai Tricumlal Mills Ltd., (2) Shri Ramkrishna Mills Co. Ltd., (3) The New Maneckchock Spg. & Wvg. Co. Ltd., (4) Shri Vivekanand Mills Co., and (5) Rustom Jehangir Vakil Mills Co. Ltd. These individual mills have pleaded that the profits shown by them in their balance sheets are subject to depreciation and taxes and would be converted into losses if depreciation and other prior charges be taken into consideration.

5. The appeals of the individual mills were argued first and the controversy mainly centres round the interpretation of the decision of the Labour Appellate Tribunal in Appeals 1 and 5 of 1950 (Millowners' Association, Bombay *v.* the Rashtriya Mill Mazdoor Sangh, Bombay and the Girni Kamgar Sangh, Kurla, and the Rashtriya Mill Mazdoor Sangh, Bombay *v.* The Millowners' Association, Bombay, 1950 2 L.L.J., page 1247). The appellants have urged that the cases of the units in the industry making meagre profits were on the same footing as those of the loss making units and units making such meagre profits should be exempted from the liability of payment of bonus. On the other hand it was contended on behalf of the Textile Labour Association that the Labour Appellate Tribunal exempted only the loss making mills and that in any case that exemption should not be extended to those units who made meagre profits which could be turned into losses by payment of the prior charges.

6. The decision of the Labour Appellate Tribunal in Appeals Nos. 1 and 5 of 1950 is binding on this Bench and as stated in paragraph 17 of that decision, the Appellate Tribunal refused to accede to the view that in the matter of payment of bonus a unit of an industry in a particular region should be ordered to pay on the ground that some amongst them are able to pay by reason of having surplus, particularly when that unit of the industry has been permitted to appear separately and to raise a special defence. The contention was accordingly overruled and it was held that the Industrial Court below rightly refused to direct the four mills to pay bonus to their employees for the year 1949. The general principles governing bonus were considered later and as enunciated in paragraph 21 as both Capital and Labour contribute to the earnings of the industrial concern it is fair that labour should derive some benefit if there is a surplus after meeting prior or necessary charges. Two of those mills had made profits which left no surplus after meeting such charges and as remarked by the Industrial Court in that case "It may well be expedient from the point of view of industrial peace to determine the quantum of bonus industrywise in a given locality ; but in the absence of any legislative provision entailing upon us the obligation to direct even those Mills that have not made profits but have suffered losses instead to pay bonus alike with those that have made profits, we do not think we would be adjudicating equitably in relation to the former if we direct them to pay bonus". Provision for (1) depreciation of the fixed block consisting of lands, buildings, plant and machinery, (2) reserves for rehabilitation and modernisation of that block worn out during the years past, (3) taxation, (4) a fair return on paid-up capital and reserves employed as working capital, take precedence over bonus, and as laid down by the Appellate Tribunal the claim of the employees for bonus would only arise after making provision for these items. This was emphasised in the recent decision of the Calcutta Bench of this Tribunal in Appeal No. Cal. 14/51 (The Eelectric Manufacturing Co. Ltd., *v.* The Oriental Fan Workers' Union). Further, section 27 of the Bombay Industrial Relations Act does not require the millowners to be represented by the Association and as remarked by the Industrial Court below even member mills are free to appear by themselves without being represented by the Association. The case of the ten mills which alleged losses was separated at the instance of the Textile Labour Association and on the present record it is not possible to adopt the principle of collective bargaining. The appellant mills in Appeals 73, 77, 78, 79 and 93 were allowed to appear separately and raise their special defence. In the circumstances and in the absence of agreement or legislation to the contrary their appeals have to be considered separately.

7. The balance sheets of these mills were not challenged before the industrial Court and their figures were included in the consolidated statement filed by the Millowners' Association for the 53 mills. They were not required to prove the figures and inclusive of Rs. 2,443-3-6 carried forward from the previous year the Lalbhai Tricumlal Mills (Appeal 73) had made a gross profit of Rs. 68,777-8-8 after payment of the contractual commission of Rs. 5,30,206-2-0 to the managing agents. The commission must continue to be governed by the laws in force for the time being and as held by the Industrial Court the statutory depreciation under the Income-Tax Act has to be allowed even though the actual amount debited is less. The statutory depreciation in this case exceeds Rs. 4 lakhs and there would be no residue left even for meeting the other prior or necessary charges.

8. The case of the Rustom Jehangir Vakil Mills Co. Ltd. (Appeal 93) is better. Inclusive of Rs. 2,457-7-5 carried forward from the previous year there was a gross profit of Rs. 1,93,467-0-3 in spite of the managing agents foregoing 2/3rd of their contractual commission. The statutory depreciation is Rs. 2,36,991 and there would be nothing left for the other prior charges.

9. The same is the case with the New Maneckchock Spinning and Weaving Co. Ltd. (Appeal 78). Inclusive of the previous year's balance of Rs. 3,964-11-4 the gross profit was Rs. 1,66,899-12-9. The statutory depreciation is Rs. 8,48,921 and there would be no residue for other prior charges.

Appeals 73, 93 and 78 have therefore to be allowed.

10. As regards the Shri Ramkrishna Mills Co. Ltd. (Appeal 77) and Shri Vivekanand Mills Ltd. (Appeal 79) even according to the statements filed on their behalf in this Court, which are challenged by the Textile Labour

sociation, there would be substantial surplus after providing for all the prior charges in both cases and there is no ground for exempting them from payment of bonus. Appeals 77 and 79 have therefore to be dismissed.

11. We shall now come to appeals Nos. 74 and 83 filed respectively by the Millowners' Association and the Textile Labour Association, which may be considered together. The case of the 10 mills which alleged losses was separated without any enquiry into the alleged losses and as urged by the Millowners' Association the figures of those mills would be material for a proper assessment of bonus industrywise. But ascertainment of those figures was not insisted upon before the Industrial Court and the claim for bonus against the 53 mills was proceeded with. In the circumstances it would not be expedient to hold up this matter for ascertainment of the figures of the 10 mills and the question is whether the award of two months' bonus is justified. The Industrial Court has based the award on the following figures :—

	In crores. Rs.
Gross Profit for 1949	5.53
Deduct Depreciation	1.73
	3.80
One-sixth of the annual basic wages as bonus	1.30
	2.50
Taxation at 6¼ annas in the rupee ...	1.01
	1.49
Reserves for rehabilitation (Rs. 2.26 crores minus Rs. 1.73 crores	0.53
	0.96
6 per cent. on paid-up capital (Rs. 11.50 crores)	0.69
	0.27
2 per cent. on reserves employed in working capital. (Rs. 13.45 crores) ...	0.26
Balance ...	0.01

12. The objections taken to those calculations by the Millowners' Association are :—

(1) The calculations of the price of machinery should not be at 2.7 times but more than that.

(2) The figure of 1.52 crores for breakdown value has wrongly been taken. This objection was not pressed during the course of the arguments.

(3) In working out the annual figures for rehabilitation the whole amount has been wrongly calculated and then it has wrongly been divided by 15 instead of 13.

(4) The amount of working capital has been underassessed by not including the cash in hand and the balances with the Banks and the interest allowed is 2 per cent. and not 4 per cent.

13. On behalf of the Textile Labour Association which has asked for an increase in the quantum of bonus it was urged that land and buildings should not be included in calculating the annual figure for rehabilitation, that depreciation actually shown in the balance sheets should be taken and that for ascertaining the quantum of bonus, reasonable amounts of managing agency commission should be allowed and not the contractual commission charged by the Managing Agents. The last contention about the contractual managing agency commission has been already considered by us and it must continue to be governed by the laws in force for the time being.

14. There is no dispute regarding the gross profit and the contention of the Textile Labour Association regarding the statutory depreciation of Rs. 1.73 crores is untenable. It was negatived by the Industrial Court and as pointed out by this Tribunal in Appeals Nos. 1 and 5 of 1950 the depreciation allowed by the income-tax authorities is only a percentage of the written down value which would not be sufficient for the purpose. The figures given for bonus and taxation were not disputed but as stated above exception was taken by the Textile Labour Association to the reserves for rehabilitation on the ground that the cost of renewal or replacement of buildings should not be and was not included in calculating the amount required under this head by this Tribunal in Appeals Nos. 1 and 5 of 1950. It is, however, seen from the award of the Industrial Court in Ref. (IC) No. 195 of 1949 and Ref. (IC) No. 6 of 1950 which led to appeals 1 and 5 of 1950 that depreciation on the fixed block consisting of lands and plant and machinery and reserves for rehabilitation and modernisation of that block worn out during the previous year was considered and provided for. The buildings are as necessary for the working of the mills as the machines and they have to be replaced and kept in order. The amount required for rehabilitation was calculated by multiplying the depreciated value of the block by 2.7 as was done in Appeals 1 and 5 of 1950 and considering that the recovery is to extend over 15 years there is no ground for adopting a different multiplier. The block was valued at Rs. 20.37 crores as at the end of 1947 and multiplying it by 2.7 the amount required for rehabilitation would be 55 crores. As regards the amount available for the purpose, as pointed out in paragraph 10 of the report of the Indian Tariff Board, in an established concern the block comprising land and buildings and plant and machinery has been built up from paid-up capital, reserve fund, depreciation fund and sometimes out of debentures and loans. So far as the paid-up share capital is concerned, the whole of it may be taken to have been sunk in the block. As regards the depreciation fund which is strictly meant to provide for replacement and renewals it is difficult to ascertain what part of that fund has been actually spent in replacement and what part in extension of the block. Similar difficulties will arise in finding out what part of the reserve fund and loans has been actually spent in financing working capital and what part in extension of the block.

15. Since 1941 depreciation is allowed by the income-tax authorities on the written down value of the block and Rs. 20.37 crores given by the Millowners' Association was the written down value of the block. The Association denies having given the amount of depreciation and reserves available as Rs. 19.59 crores (Depreciation—Rs. 13.08 crores and reserves available—Rs. 6.51 crores) and Exhibit II filed by them in the Industrial Court supports them. Therein the surplus available is given as 6.51 crores and two items—premium on shares (.74 crores) and machinery renewal (1.84 crores) which were omitted were included in Appendix A filed before us which gives the figures as at the end of 1947 as follows :—

Paid-up Capital	6.53 crores.
Depreciation	13.08 crores.
Reserves	7.27 crores.
Premium on shares	.74 crores.
Machinery renewal	1.84 crores.
Total ...	29.46 crores.

Deducting 20.37 crores the value of the block at the end of 1947 the surplus available for rehabilitation of the block would be 9.09 crores. It was not suggested that the fixed block was built up from sources other than the funds of the mills and as urged by the Millowners' Association the proper method of ascertaining the surplus available for rehabilitation is by deducting the value of the block at the end of 1947 from the Total funds. This was the method adopted in the Bombay Millowners' case and it is not at all likely that a sum of Rs. 19.59 crores would be available for the purpose. The surplus available for the purpose would therefore be 9.09 crores and to this must be added the breakdown value of 1.52 crores which was not seriously disputed by the mills. The balance required would be 44.39 crores and this would normally have to be divided by 15. But a sum of 3.77 crores was allowed by the award of 1948 and the balance required would be 40.62 crores which has to be divided by 14. The annual figure for rehabilitation according to this calculation would be 2.90 crores as against 2.26 crores fixed by the Industrial Court, but for the purposes of these appeals the latter figure was adopted by the Millowners' Association without admitting its correctness. Deducting the depreciation of 1.73 crores the reserve under rehabilitation will be .53 crores. There is no dispute regarding the return on the paid-up capital and it remains to consider whether the Industrial Court was justified in disallowing interest on the cash and bank balance at the end of the year. The record does not show that this amount was held for the business throughout the year or that it formed part of reserves employed in the working capital. That being so interest was rightly disallowed on that amount and the interest allowed on 13.45 crores is proper. The figures would therefore justify the award of two months' bonus to the employees of the 50 mills in spite of the negligible balance of .01 crores.

16. The position would not be better even after deducting the consolidated figures of the 3 mills which have

been exempted. The figures after deduction will be as follows :

	(In crores).
Gross Profit	5.50
Deduct Depreciation	1.58
	3.92
Bonus at 2 months	1.24
	2.68
Taxation at As. 6½ in a rupee	1.10
	1.58
Reserves for rehabilitation	.56
	1.02
Dividend at 6 per cent. on paid-up capital	.67
	0.35
Interest on working capital at 2 per cent	.25
	0.10

These figures also justify a bonus of two months to the employees of the 50 mills but the claim of the Textile Labour Association for an increase in the quantum cannot be entertained.

17. The Millowners' Association has also appealed against the departure made by the Industrial Court in the conditions attached to the payment of bonus from the 1948 award. The Industrial Court nas overlooked that only the last sentence of condition 1 was deleted by the Appellate Tribunal and an application for review of the deletion of the second condition regarding dismissal for misconduct is pending. It seems that in the matter of laying down conditions the views of this Tribunal have not yet finalised. In the circumstances we would not disturb the decision of the lower Court.

18. In the result Appeals Nos. 74 and 83 are dismissed as also the appeals 77 and 79. Appeals 73, 93 and 78 are allowed. The award of the Industrial Court dated the 8th March 1951 granting two months' bonus to the employees of the Textile Mills in Ahmedabad is upheld except in the case of the 3 mills exempted by us namely, the Lalbhai Tricumlal Mills Ltd., Rustom Jehangir Vakil Mills Co. Ltd., and the New Maneckchock Spinning and Weaving Co. Ltd. The mills exempted will be permitted to withdraw the monies deposited by them individually in pursuance of the Stay Order of this Tribunal dated the 10th May 1951. The other mills will also be permitted to withdraw the amounts deposited by them jointly on condition that bonus payable under the award is paid to their employees within 15 days from the date of this decision. We make no order as to costs.

K. P. LAKSHMANA RAO,
President.

G. P. MATHUR,
Member.

Appeal (Bom) No. 110 of 1951

The Bhalakia Mills Co. Ltd., Kankaria Road, Ahmedabad—*Appellants.*

versus

Shri Kanaiyalal N. Dave, C/o Ahmedabad Mazdoor Mandal, Mission Road, Bhadra, Ahmedabad—*Respondents.*

In the matter of an appeal against the order of the Industrial Court (Shri K. C. Sen), Bombay in Appeal (IC) No. 22 of 1951, dated 27th March 1951.

The 3rd day of August 1951.

Present :

Mr. K. P. Lakshmana Rao, President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. I. M. Nanavati, Pleader.

For the Respondents.—Mr. C. T. Daru, General Secretary, Ahmedabad Mazdoor Mandal.

State.—Bombay.

Industry.—Textile (Cotton).

DECISION

This is an appeal against an appellate order of the President of the Industrial Court, Bombay, Mr. K. C. Sen. The respondent Shri Kanaiyalal N. Dave made an application under section 78 (1) (A) (a) (i) and (iii) and 42(4) of the Bombay Industrial Relations Act to the Labour Court at Ahmedabad alleging that his dismissal by order dated 30th June 1950 was illegal and improper and praying that he may be reinstated and compensation may be paid to him.

2. The applicant was a permanent employee working as a clerk in the ration shop of the Bhalakia Mills Co. Ltd., Ahmedabad. His complaint was that when an increase was made in his salary he asked for dearness allowance and on his insistence he was suddenly dismissed by the Manager without complying with any of the provisions of the Standing Orders. The application was contested on the ground that the applicant was a clerk in the ration shop which was run by a contractor and that as it was not an ordinary work of the undertaking of a textile mill the applicant was not an employee as defined under the Bombay Industrial Relations Act and was therefore not entitled to any of the reliefs claimed.

3. The Labour Court, Ahmedabad, by its judgment dated the 28th December 1950 held that the applicant was not entitled to any relief. It was further held that the applicant was not an employee as defined under the Bombay Industrial Relations Act and so was not entitled to file the application and it was accordingly dismissed.

4. The applicant Shri Kanaiyalal N. Dave then filed an appeal to the Industrial Court, Bombay, which was heard by Mr. K. C. Sen, President of the Industrial Court, who allowed the appeal, set aside the order of the Labour Court and directed that the applicant be reinstated and be paid wages and allowance during the period of his unemployment in respect of three months with continuity of service.

5. In this appeal on behalf of the Bhalakia Mills Co. Ltd., Ahmedabad, the decision of the Industrial Court is challenged and it is reiterated that under the provisions of the Bombay Industrial Relations Act, namely section 3(13) (a) read with section 3(14) (e) the respondent was not an 'employee' of the appellant and therefore the learned President of the Industrial Court erred in giving him the relief of reinstatement and payment of compensation.

6. We have heard learned Counsel for the appellant and the representative of the respondent and in our opinion the whole point lies within a very narrow compass. There can be no doubt that the respondent would be out of Court if he does not come within the definition of 'employee' as given in section 3 clause (13) read with clause (14) sub-clause (e). Section 3 clause (13) runs thus :

> "Employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes—
>
> "(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14)".

Section 3 clause (14) sub-clause (e) runs thus :

> "Employer" includes—
>
> "(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking".

7. There can be no doubt that the respondent was employed by a contractor to do the clerical work for him for the execution of the contract with the appellant. But the question remains whether the latter part of clause 13 sub-clause (a) has been satisfied or not i.e., whether the employment was within the meaning of sub-clause (e) of clause (14). It would be noticed that the important words in section 3 clause (14) sub-clause (e) are "for the execution.....of the whole or any part of any work which is ordinarily part of the undertaking". The whole matter turns on the interpretation whether the running of the ration shop can be said to be a work which is ordinarily part of the undertaking i.e., the textile mill. The learned President of the Industrial Court has expressed himself on this point in the following manner :

> "The words, *viz.*, "ordinary part of the undertaking" are to be found in the definition of "employer" in section 3(14) of the Act, wherein it has been stated that the expression would include, "where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is

ordinarily part of the undertaking, the owner of the undertaking". Even granting that there there might have been an emergency necessitating the enactment of the Ahmedabad Rationing Regulations, during the pendency of such emergency (which has now lasted for some years) the work of running a ration shop would be ordinarily included in the work of the undertaking; for "ordinarily" does not necessarily mean "always" or "in more normal times than the present" although it is impossible to say when or whether at all such times will come. It seems to me, therefore, that the applicant should not in this case have been treated as falling outside the scope of the Bombay Industrial Relations Act".

8. With due deference to the learned President of the Industrial Court we are of opinion that he has not rightly construed the section in question. In the Concise Oxford Dictionary, Third Edition, the meaning of the word "ordinary" is given as "regular, normal, customary, usual, not exceptional, not above the usual, commonplace". It will be obvious from this that anything which is not normal, regular, customary or usual, would not be called "ordinary". It is also obvious that it is not the business of the textile mill to run a ration shop but that duty was imposed on the appellants by the Ahmedabad Rationing Regulations which was an emergency measure. In this view of the matter we have no hesitation in holding that the running of a ration shop was not the work which was ordinarily a part of the undertaking of the appellant. As such the respondent could not be an employee as defined in the Bombay Industrial Relations Act and will not therefore be entitled to any relief as given by the Industrial Court.

9. We may also point out in this connection that a similar view was taken by a Member of the Industrial Court in Reference (IC) No. 145 of 1949 (1950 I.C.R. 1161). Mr. Shah who decided that case came to the conclusion that the running of a ration shop was not one of the occupations in the textile mill with which he was dealing. He also relied on Appendix III in Patwari's Bombay Industrial Relations Act, Vol. II, p. 571 and subsequent pages. In the list of occupations given at pages 578 to 583 the running of a ration shop does not find a place. It is no doubt true that the respondent was a clerk but he was a clerk of a ration shop and he would have no standing unless the ration shop is held to be an ordinary part of the undertaking.

10. We are therefore of the opinion that the order passed by the President of the Industrial Court must be set aside and the order of the Labour Court dismissing the application restored. The appeal is accordingly allowed. We make no order as to costs.

K. P. LAKSHMANA RAO,
President.

G. P. MATHUR,
Member.

Calcutta, the 9th August, 1951

No. LA.6(2)/2988.—The following decisions of the Calcutta Bench of the Tribunal are published for general information :—

1. Appeal No. Cal-1 of 1950.
2. Appeal No. Cal-2 of 1950.
3. Appeal No. 14 of 1950.
4. Appeal No. 59 of 1950.
5. Appeal No. 110 of 1950.
6. Appeal No. 98 of 1950.
7. Appeal No. 68 of 1950.
8. Appeal No. 114 of 1950.
9. Appeal No. 18 of 1950.
10. Appeal No. 119 of 1950.
11. Appeal No. Cal-7 of 1950.
12. Appeal No. 32 of 1950.
13. Appeal No. Cal-11 of 1950.

J. N. MAJUMDAR,
Chairman.
Labour Appellate Tribunal of India.

Appeal No. Cal-1 of 1950

Messrs. Allen Berry & Co. Ltd., 62, Hazra Road, Calcutta
—*Appellants.*

Versus

The Workmen employed under it. Represented by Allen Berry (Hazra) Mazdoor Congress, 26A Deodar Street, Calcutta, and Allen Berry Head Office Employees' Union, 26 Deodar Street, Calcutta—*Respondents.*

In the matter of an appeal against the order dated 5th October 1950 by Sri M. C. Banerjee, Judge, Industrial Tribunal, Calcutta, in case No. VIII-103 of 1950.

The 13th day of November 1950

Present :

Mr. J. N. Majumdar—*Chairman.*

R. C. Mitter, Kt.—*Member.*

Appearances :

For the Appellants.—Sri K. B. Bose, Counsel, with Sri S. C. Sen, Advocate, and Sri J. K. Ghosh, Pleader, instructed by Messrs. Orr Dignam & Co., Solicitors, Calcutta.

For the Respondents.—Sri D. L. Sengupta, Advocate, with Sri P. C. Das Gupta, Pleader.

State.—West Bengal.

Industry.—Engineering.

DECISION

This appeal arises out of an order dated 5th October 1950 made by Mr. M. C. Banerjee, the Industrial Tribunal, to whom a reference under Section 10 of the Industrial Disputes Act, XIV of 1947, was made by the Government of West Bengal by its order No. 4567-Lab., dated 17th August 1950 for adjudication of an industrial dispute between the appellant Company, hereinafter referred as the Company, and its workmen represented by two Unions. The dispute related to the closure of the workshop of the company at Konnagore, which resulted in the discharge of 149 workmen.

Out of total number, 79 workmen after having received the compensation as agreed upon between them and the company, left its service. The remaining 70 did not agree and during the pendency of the proceedings the respondent Unions made an application before the Tribunal on the 20th September 1950 "for directing the Company to pay full wages for the lock-out period till the date of the award with provision of readjusting the same to what might be determined as the dues of the workmen in the award, or in the alternative to pay them all as offered by the company and paid to many workmen on terms mentioned in paragraph (2) without insisting for any bond and without prejudice to the case". In paragraph (2) of the application those terms were set out as follows :—

> "That the Company of their own accord offered only 3 months basic wages, contribution to the Provident Fund including that of the employer and gratuity as per the Award on giving by the employees a full and final settlement receipt and a statement to the effect that they have no dispute with the Company".

On this application by its aforesaid order the Tribunal directed the Company to pay two months emoluments (basic pay and dearness allowance) to each of the employees who had not received compensation from the Company in satisfaction of termination of service within 7 days from date. It was further directed that "the Company and the Unions be informed through their lawyers and directly". On the same day the hearing of reference was adjourned to the 11th November 1950.

In course of the hearing of the appeal the question arose, whether under Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, an appeal lay against this order. Section 7(1) of the Act provides for an appeal from an award or decision of an Industrial Tribunal if (a) the appeal involves any substantial question of law or (b) relates to any of the matters mentioned in clauses (i) to (vii) of sub-section 1(b).

Mr. Bose appearing for the Company concedes that the subject matter of the appeal does not fall within any of the clauses of Section 7(1)(b) of the Act. He further states that he cannot say that the sums of money directed to be paid to the workmen by the order under appeal are excessive or the reasons given by the Tribunal are bad. But his contention is that the Tribunal had no power to make such an order. That question, no doubt, raises a question of law, and if it be a substantial one, the appeal would be a competent one. On giving the matter our anxious consideration we agree with his contention that the question of law is a substantial one and so hold that the appeal is competent.

He formulated his points of law thus :—

(1) that (leaving out Section 33 which is not material in the present case) under the Industrial Disputes Act XIV of 1947, (hereinafter referred

to as "the Act") a Tribunal has power *only* to make an interim or final award, and so cannot make an order of this kind;

(2) that the order appealed from is not an interim award,

(3) that even if it be regarded as an interim award the Tribunal had no power to fix a date for payment and direct the Company to make the payment within that date and bind it to do so by the order being shown to its lawyers.

As an Industrial Tribunal is a creature of the Industrial Disputes Act, 1947, it cannot be disputed that it will have only such jurisdiction and powers which are in terms conferred on it by that Act. It acquires jurisdiction over an industrial dispute only on a reference being made to it by the appropriate Government and its duty is to make an adjudication by an award and submitting it to the appropriate Government (Section 10 and 15 of the Act). Powers which would be necessary and the procedure to be followed by it for enabling it to make the adjudication are also conferred and defined in the Act. The subjects on which interlocutory orders can be made and the nature thereof are also precisely defined in Section 33 of the Act. It can, therefore, be taken that the jurisdiction of a Tribunal under the Act is confined to making (1) awards and (2) orders under Section 33.

The important question, therefore, is whether the order under appeal can be regarded as an "interim award".

Award has been defined in the Act as "an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto".

To be an "interim" award, therefore, the order passed by the Industrial Tribunal

(1) must have determined a dispute referred to the Tribunal, or,

(2) must have determined a question relating to that dispute.

The term "interim" signifies that the decision of the Tribunal on the aforesaid matters is to be operative for a time till the final determination is made in the final award. The order under appeal satisfied this test. One of the issues raised by the parties before the Tribunal was "compensation for termination of employment". The statement made in the order that "the question at issues involves payment of compensation on the claim of re-instatement being decided affirmatively or negatively" is not disputed by Mr. Bose. The position being that the workmen would be entitled to compensation, in any event. The Tribunal made an order allowing some compensation pending final decision of the points at issue, in view of the fact that the final award could not be made or enforced before the Pujas, when the workmen will need some extra money to meet their expenses. On the facts and circumstances of the case and in law and also having regard to the way the Tribunal expressed himself, we cannot conceive of the order being anything other than an interim award.

Mr. Bose developed his argument on the last point as follows :—

An interim award like a final award has to be sent by the Tribunal to the appropriate Government which is to publish it in accordance with the provisions of Section 17 of the Act. It is only *through* the publication by the appropriate Government that a direction for the payment of money could be made effective, and not through the communication by the Tribunal of the order for payment to the party obliged or to his lawyer, as has been done in this case. We cannot accept his contentions.

Section 15 of the Act requires the Tribunal to submit its award to the appropriate Government on *the conclusion* of the *proceedings*. The word "proceedings" in this Section, in our judgment, mean the whole proceeding that is to say, all that had been referred to the Tribunal by the appropriate Government for adjudication. It is, therefore, in our judgment, not obligatory on a Tribunal to submit an interim award to the appropriate Government before the final award is made and if it chooses not to submit it before that time *a fortiori* the question of publication of such an award by the appropriate Government does not arise. As in terms there is no provision in the Act which requires publication of an interim award, the case would come within the express terms of Section 18(1) clause (ii) of the Industrial Disputes (Appellate Tribunal) Act, 1950 and so an interim award would become, subject to the provisions of that Act, enforceable from the date on which it is made. We cannot cut down the plain and unambiguous words of that clause. Sub-section (3) of that Section of the Act lays down that where no date is specified in the award or decision, it will come into operation on the date when it becomes enforceable, but where a date is mentioned in the award or decision, it would come into operation with effect from that date. In the case before us, therefore, the order under appeal which we have held to be an interim award, came into operation, that is to say, became effective in the eye of law, within seven days from the date of the order.

The result is that we dismiss the appeal. The respondents will get as costs Rs. 51 payable within three weeks from the date of this order. No costs on the applications for Stay. Messrs. Orr Dignam & Co. would be at liberty to refund to Messrs. Allen Berry & Co. Rs. 7,500 held by them in pursuance of our previous order.

J. N MAJUMDAR,
Chairman.
R. C. MITTER,
Member.

Appeal No. Cal-2 of 1950

Employees of the Kusum Hosiery Mills, Calcutta, Represented by the Kusum Hosiery Workers' Union, 27/1 Beliaghata Main Road, Calcutta—*Appellants.*

Versus

The Kusum Hosiery Mills, 81 Talpukur Road, Beliaghata, Calcutta—*Respondents.*

In the matter of an appeal against the Order dated 10th October 1950 of Sri P. R. Mukherji, Judge, the Industrial Tribunal, Calcutta, in Misc. case No. 12 of 1950.

The 13th day of November 1950

Present :

Mr. J. N. Majumdar, Chairman.

R. C. Mitter, Kt., Member.

Appearances :

For the Appellants.—Sri D. L. Sen Gupta, Advocate with Mr. P. C. Das Gupta, Pleader.

For the Respondents.—Mr. S. C. Sen, Advocate with Mr. N. M. Das Gupta, Pleader.

State.—West Bengal.

Industry.—Hosiery Mill.

DECISION

By an order made by the West Bengal Government in its Department of Labour, dated the 25th August, 1950, a reference was made to the Industrial Tribunal, Calcutta (hereafter called the Tribunal) under Section 10 of the Industrial Disputes Act, 1947 (hereafter called the Act) for adjudication of the dispute between the aforesaid Mill and its employees in respect of the following matters, namely,

1. Scale of pay;
2. Permanency of service;
3. Provident Fund;
4. Leave; and
5. Medical facilities.

The adjudication was pending in September and October and we are informed is still pending before the Tribunal.

The main workshop of the employer is situated at No. 81 Talpukur Road where only male workmen are employed, but there was another place, namely, No. 23 Talpukur Road where the women section was located.

On the 28th September, 1950, the employer made a written application before the Tribunal under Section 33 of the Act asking for permission to discharge all the sixteen workers of the women's section and sixteen workmen of the male section. The grounds alleged in support of the prayers were :—

(a) that the employer had to vacate premises No. 23 Talpukur Road as the result of a criminal prosecution which ended in conviction and have not been able to find another accommodation for the women, section, and

(b) that there is short supply of yarn, as the Government of West Bengal had reduced supply.

The Tribunal issued a notice on the Union accompanied by a copy of the said application fixing the 5th October, 1950, for filing the written statement in reply.

the 5th October, the Union appeared and prayed for time to file the written statement. That prayer was granted and the hearing was fixed for the 9th October. On that date the Union filed its written statement and the application was taken up for hearing in the presence of both parties. The hearing concluded on the next day and an order granting the employer permission to discharge all the thirtytwo workmen was granted. Against that order this appeal has been filed by the Union.

In the written statement filed by the Union it was stated *inter alia* that the women section was still working at No. 23 Talpukur Road, that in any event there was sufficient space in premises No. 81 Talpukur Road for the accommodation of the women workers; that it did not admit the short supply of yarn; that even if there was short supply, it was only of a temporary nature, and that in any event the employer would not suffer by short supply of raw materials but the workmen only would, as most of them were piece-rates. The Union further suggested that the real motive of the employer behind the application was to coerce those workmen for their participation in the Union activities and in agitating their grievances before the Tribunal.

The employer adduced in evidence only three documents, namely,

1. (a) a summons dated the 13th July 1950 from the Municipal Magistrate requiring the employer to answer on the 20th July 1950 the charge of using premises No. 23 Talpukur Road for the manufacture of hosiery goods without taking out a licence for the year 1949-50;

   (b) a receipt dated the 20th July 1950 showing the payment of Rs. 36 imposed as fine by the Municipal Magistrate; and

2. a letter from the Directorate of Textiles, Calcutta, dated the 25th September, informing the employer that on account of unsatisfactory stock position of hosiery yarn and the inadequate quota allotted by the Textile Commissioner, Bombay, to the West Bengal State, it was not possible to make available to the employer against his permits the full supply, but the quantity had to be reduced pro *rata* as in the case of all other hosiery works. The letter concluded by saying that the matter has been taken up by the West Bengal State with the Textiles Commissioner, Bombay, but until the supply position improved it was not possible to guarantee full allotment on the permit.

A copy of an order made by the Second Industrial Tribunal, Madras, dated the 15th July, 1950 (hereafter called the Madras Tribunal) made in the case of Buckingham & Carnatic Co. Ltd. *vs.* a number of Trade Unions was filed by the employer to support its contention on the question of law. The order which is the subject matter of the appeal closely follows the reasoning and at some places the language of that order.

It has been held by the Tribunal that no notice of an application made by an employer under Sec. 33 of the Act is required by law to be given to the workmen concerned and that an elaborate enquiry or investigation was not contemplated by the legislature in respect thereto. He observed that "*that being* so the only question for determination by the Tribunal was if there was a prima facie strong case for discharging the workmen *on the grounds stated* in the application".

The Tribunal later on made the further observation that the permission contemplated in Section 33 as amended was merely formal. The order gives sufficient indication that the Tribunal made no attempt to make any, enquiry or investigation into the truth or otherwise or the sufficiency of the statements, made in the application on which the prayer for discharging the thirtytwo workmen had been rested, but assumed them to be true, though the Union's case, as made in its written statement, was that they were neither true nor sufficient, but proceeded on the footing that its function was only to see if those grounds could be regarded as prima facie good and urgent grounds to sustain the discharge of the workmen, so as to merit the grant of permission. We will deal with merits later on.

The respondent's advocate took a preliminary objection as to the competency of the appeal, when the appeal was called for hearing. His contentions were that no appeal lay, because

1. The order under appeal is not an award,
2. that it is not even a decision and
3. that even if it be regarded as a decision within the meaning of Section 7 of the Industrial disputes (Appellate Tribunal) Act, 1950 (hereafter called the Appellate Tribunal Act) neither the appeal involves any substantial question of law nor it is in respect of any of the matters enumerated under clause (b) of Section 7(1).

There is no doubt that the order under appeal is not an award within the meaning of the Act. Further the order, assuming it for the present to be a decision, is not in respect of any of the matters enumerated in clause (i) to (vi) and (viii) of Section 7(1)(b) of the said Act. The real question on this part of the argument is whether the decision, is "in respect of retrenchment". In our opinion a decision would be "in respect of retrenchment" if it is a decision *directly bearing* upon the question of retrenchment; that is to say, either maintaining or upsetting retrenchment made by the employer by directing reinstatement or without directing re-instatement, directing payment of compensation to the workers affected in lieu of re-instatement. This is not the *direct* effect of a permission granted under Section 33 of the Act. It only clothes the employer with a power to discharge a workman concerned in the dispute without incurring the risk of the penalty provided for in Section 31 of the Act. The appeal before us would therefore be competent only (1) if the order under appeal be held to be a decision within the meaning of Section 7: and (2) if it involves a substantial question of law.

We take up the two points together as they are to some extent interconnected.

We cannot accept the contention of the respondent that an order granting or refusing permission under Section 33 of the Act is either a Ministerial Act or an administrative act—phrases which were constantly used by the respondent's advocate in the course of his argument, but hold that the functions of a Tribunal under Section 33 of the Act are judicial functions for there is a *lis* between the parties to the application which may result in the interference with their civil rights, even though it be for a time.

The Tribunal in coming to the conclusion that no notice is required by law to be given to the workmen of the employer's application for permission made under Section 33 has given the following reasons:

1. That neither Section 33 nor any other Section of the Act provides for a notice to the workmen of such an application, and there was a designed omission by the legislature in this respect which indicates that it never contemplated a long and detailed enquiry while the main dispute was going on:

2. That the permission contemplated in the Section is merely formal and to meet a case of emergency:

3. That the application is something in the nature of a prayer for an injunction on filing a plaint and so just as in the case of urgent matter, the Civil Courts grant injunction *ex parte* on the prayer by the plaintiff, similarly the prayer for discharge or dismissal etc. in the case of emergency is to be granted by the Tribunal, if a prima facie strong case is made out by the applicant:

4. That no notice need be given to the workmen concerned of such an application, because they will not be prejudiced by the grant of the permission as on being actually discharged or dismissed etc. on the strength of the permission, they would not be without remedy as they could apply to the appropriate Government for a reference under Section 10 of the Act and the legality or propriety of the discharge, dismissal etc. would be enquired into by the Tribunal on the reference made, and effectively and conclusively adjudicated upon in its award.

A further reason was given by the Madras Tribunal in its award made in the case of Buckingham & Carnatic Co Ltd., namely, that it would not be possible to give notice of such an application to the workmen in a case contemplated in the first part of Section 22 of the Appellate Tribunal Act of 1950. This reason was not specifically referred to by the Tribunal in its order under appeal, but there cannot be any doubt that the said order of the Madras Tribunal carried considerable weight with the Tribunal. We therefore think proper to notice it and deal with it in our judgment.

We have already held that a Tribunal acts judicially in exercising its powers under Section 33 of the Act, and so those powers must be exercised in conformity with the general and fundamental principles on which all judicial acts have to be performed, namely, by giving notice to the party likely to be affected by its act and by allowing him opportunity to present his case. The first reason given by the Tribunal, therefore, does not appeal to us. The correct approach in our opinion would be that the Act being a judicial act notice of the proceedings on the

workmen concerned would have to be regarded as obligatory on the part of the Tribunal, unless notice had been dispensed with by express provisions made in the Act or in the Statutory rules. It would be speculating on the intention of the legislature to say that it never intended an elaborate enquiry or a "full dressed enquiry", to use the expressions of Madras Tribunal in the case noticed above, for that intention cannot be gathered from any of the provisions of the Act. The nature of the enquiry must depend on the nature of the allegations made in the application and in the written statement filed in opposition, and all that can be said is that an elaborate enquiry is not generally desirable on a matter of this kind, but we are definitely of the opinion that a *proper* enquiry or investigation must be made to test the truth and sufficiency of the statement made in the application. If such an enquiry or investigation has to be made the workmen concerned or their Union must be allowed to adduce evidence or place such materials before the Tribunal which would enable the Tribunal to discharge its functions properly, and in a matter like this with careful circumspection. The necessity for investigation in the manner indicated is greater to guard against any attempt to victimise or to coerce or to obtain other unfair advantage by the employer in respect of the pending adjudication proceedings under Section 10 of the Act.

The reference by the Tribunal to temporary injunctions by way of analogy is rather unhappy. Probably the Tribunal meant to refer to an interim injunction pending the hearing of a *rule nisi* for a temporary injunction. There the opposite party is by notice asked to show cause. He has the opportunity to appear later on and to place materials before the Civil Court for inducing the Court to dissolve the interim injunction and/or to discharge the *rule nisi*. The last reason given also does not commend itself to us. No doubt theoretically a workman discharged or dismissed or where conditions of his service are changed on the strength of the permission may have remedy under the Act itself, or he or his Union can make that matter the subject of an industrial dispute and move the appropriate Government for a reference under Section 10 of the Act. But neither he nor his Union can under the Act directly and without the intervention of the appropriate Government invoke the jurisdiction of the Tribunal and it may be that the appropriate Government on seeing that he had been discharged or dismissed or his conditions of service had been changed on the strength of permission given under Section 33 of the Act may refuse to make a reference.

We are not also impressed by the additional reason given by the Madras Tribunal. Section 22 of the Appellate Tribunal Act, 1950, indicates the form where the application under that section is to be made, namely, to the Appellate Tribunal constituted under that Act, and even at a time when the appeal had not been filed. There is no inherent impossibility of giving notice of the application to the workmen concerned, where the application is for permission to discharge or dismiss the workmen whom the employer proposes to remove for they must be named in the application and notice of the application can be served on them by the Appellate Tribunal. When the application is for permission to alter the conditions of service of particular workmen, they must also be named in the application and where it is for alteration of the conditions of service of a class of workman or all the workmen notice could be given to the Union of which they are members, and where they are not members of a Union, to all of them individually. In any event the application must in its cause title name the opposite parties and notice can be given to them.

The legislature has indicated its general intention to the effect that during the pendency of an industrial dispute the status quo is to be maintained. Section 23 of the Act clearly shows that. That is also one of the purposes of Section 33 which has an additional object in view, as we have already pointed out namely, to prevent an attempt to victimise, to coerce, or to take an unfair advantage in the proceedings concerning the industrial dispute that had been referred to the Tribunal for adjudication, as for instance an attempt to coerce the workmen taking active interest in those proceedings. Section 33 A further indicates that the legislature favoured the principle on which Civil Courts of the land always act namely the principle that multiplicity of suits and proceedings are to be avoided as far as possible. So where an employer contravenes the provisions of Section 33 of the Act that Tribunal in which the adjudication of the Industrial dispute was then pending is to entertain the complaint of the workman affected without the necessity of an order of appropriate Government to adjudicate upon it and to give its award. Before the introduction of Section 33 A in the Act, the position was different for then the aggrieved workman in order to obtain redress from an industrial tribunal had to seek for a new reference by the appropriate Government under Section 10 of the Act. If an enquiry or investigation is made by the Tribunal, such as an officer exercising judicial functions makes or is expected to make, in respect of an application under Section 33 of the Act, we doubt whether the appropriate Government will be competent to make a reference again in respect of matters covered by the permission. At any rate if the appropriate Government finds that the permission was granted after proper enquiry or investigation, it may decline to make another reference under Section 10, if and when the permission obtained is implemented by the employer.

We, therefore, hold that a substantive question of law is involved in the appeal, and further that the question has been wrongly decided by the Tribunal.

The only other question is whether the order against which the appeal is directed, is a decision within the meaning of Section 7 of the Appellate Tribunals Act of 1950.

That section speaks of "an award or decision". The first contention of the respondent's advocate was that the said phrase is to be read disjunctively. That is to say, the word "award" must be taken to refer to Industrial Tribunals established under the Industrial Disputes Act, 1947 or other Acts which require the making of "awards", and the word "decision" refers to final adjudications of other authorities established under other Acts which are not termed "awards" under those Acts; as for instance, Payment of Wages Act, Section 15, etc. He contends this construction should be adopted, for the definition of the word "Tribunal" as given in the Appellate Tribunals Act, 1950 is comprehensive enough to include those other authorities for the purpose of appeal. We cannot accept this contention for there are no indications in the Act for the phrase being read disjunctively. The right of appeal is a substantive right and a very valuable one. No doubt it is a creature of statute, so that it cannot be extended by analogy. (Att.-General *Vs.* Silleen 10 H.L. cases 704). But if the matter comes within the words of the statute creating the right of appeal, a construction which would have the effect of curtailing the right is to be avoided. The rule is that in such matters a liberal construction is to be adopted in preference to a more restricted one. A superior Court or Tribunal must always jealously guard its jurisdiction, and the entertainment of an appeal is a very important aspect of its jurisdiction. These principles are well established.

The second contention of the respondent's advocate is that the word "decision" implies (a) a judicial act, and (b) that judicial act must be a *final* act of *adjudication* respecting the rights of the parties involved in the proceedings. In support of this contention he has strongly relied upon the decision of a Division Bench of the Madras High Court in Thangavelu & Others *Vs.* The Buckingham & Carnatic Co. Ltd. and another. (2 Labour Law Journal (Madras) 1219). The subject matter of that decision was the Order of the Madras Tribunal referred to above. The Madras Tribunal held, as we have already said, that notice of an application made by the employer under Section 33 of the Act praying for permission to discharge workmen was not required by law to be given to the opposite parties to the application (in that case a number of Trade Unions) and granted the permission *ex parte* after refusing to hear the Trade Unions who had appeared at the hearing. This is the case which we have noticed in the earlier part of our decision. An application was made to the High Court for grant of a writ *certiorari* for the purpose of quashing the proceedings of the Madras Tribunal on the ground that the order granting the permission was without jurisdiction and as being contrary to the principles of natural justice which require that a party should be heard before an order to his detriment is passed. That ground would have justified the issue of such a writ. But it is an accepted rule that the issue of such a writ lies in the discretion of the Court, and that where there is another specific and adequate remedy open to the party applying for the issue of such a writ, the superior Court would not grant it. This proposition was noticed and accepted in the last part of the judgment in the following observations :—

> "We have already given our reasons for holding that it (the order granting permission) cannot even amount to a decision. If, however, the order amounts to a decision then under Section 7 of the Act XLVIII of 1950 an appeal will lie to the Appellate Tribunal from such a decision. That is the specific remedy provided by statute. If an appeal lies it is certainly an adequate remedy. It is a well established rule of practice that this Court will not issue a prerogative writ of *certiorari* if there is another adequate remedy",

These observations indicate that the learned judges did not apply their mind to the question whether the order could be considered to be a decision for the purpose of an appeal under Section 7 of the Appellate Tribunal Act of 1950, and this is natural because the proceedings before them were of a different nature. The observations, therefore, which they made in the earlier part of the judgment on the point, would not carry the same weight as they would have done, if the precise question, which is before us, was the question before them. Moreover, in first portion of the judgment the learned judges observed, and with due respect rightly, that they would not issue a writ of *certiorari* to quash the proceedings, as the order complained of was not "final and conclusive" and had not amounted to an adjudication as to the validity and propriety of the discharge. This observation also shows that the main ground for the refusal to issue the writ asked for was that the judges were not prepared to exercise their discretion in favour of the applicants. The second ground on which they refused the writ was that the act of granting permission was not a judicial or quasi-judicial act. That ground is relevant in this case.

The learned judges held that the object of Section 33 was to prevent the employer from resorting to any intimation or coercion of workmen by taking drastic action against them during the pendency of the adjudication of an industrial dispute by the Tribunal. In our opinion that object cannot be attained by an *ex parte* hearing, for the employer, to hide the real object, may withhold important materials or make false or misleading statements to prop up false grounds.

Moreover, an employer who asks for permission under that Section does not ask it for the simple pleasure of obtaining it or for the purpose of keeping it as a reserve in his armoury. When he asks for permission he means to implement or act up to it, if granted, and so the workmen against whom permission is sought for are vitally interested in the subject matter of the application. The Tribunal must, therefore, not only act with care and caution but also see that the application is a bonafide one and is based on real and not faked grounds and this can only be found out if notice is given to the workmen concerned and if they are heard and allowed to adduce evidence. This is an additional reason for holding that the act of the Tribunal would be regarded as a judicial act performed in the course of a judicial proceeding. We, therefore, record our respectful dissent from the view of the learned judges of the Madras High Court and cannot agree with the reasons adduced to support it that "the language (of Section 33) is very inappropriate to elevate the permission granted under Section 33 to the status of a judicial or quasi-judicial act". The substance and not the form must, in our opinion, be the determining factor.

The plain meaning of the word "decision" is "to determine", "to form a definite opinion", "to come to a conclusion", "the act of settling or terminating a controversy by giving a victory to one side". The order appealed from satisfies the definition for the Tribunal has come to a conclusion, rightly or wrongly, and by its order has terminated the controversy on the point as to whether permission is to be granted or not by giving a victory to the employer. We have already held that the order appealed from is bad in law, as the Tribunal had excluded the Union from participating in the hearing in the manner it should have done. We are further of opinion that the materials placed by the employer before the Tribunal, which we have set out earlier, are insufficient, even to support a *prima facie* case. The conviction of the employer by the Municipal Magistrate was for not taking out a licence for the year 1949-50 to use premises No. 23 for his manufacturing business. The necessity of vacating the premises by the employer does not naturally flow from that order for conviction. To continue his establishment at that place the employer had only to take out a licence for the year 1950-51 from the Municipal authorities by paying a comparatively a small licence fee. A mere inspection of the premises would have disclosed if the employer had left the premises or not, and if it was found that he had, an inspection of premises No. 81 would have disclosed whether sufficient accommodation could be found there for the women workers. This enquiry would not have turned out to be an elaborate enquiry, as it would have occupied very little time.

With regard to the male workmen, the Tribunal in making the decision did not even refer to the letter of the Directorate of Textiles beyond making a passing reference to it, when summarising the case of the employer. There is, moreover, no evidence to what extent the supply of yarn has been reduced, and from when, and no materials had been placed by the employer before the Tribunal to show what quantity of yarn was being used in the past and what quantity would be required to keep in employment the staff as it then was. That would depend upon the manufacturing capacity of the workshop, which could have been found out by a short enquiry. Besides, the question as to whether there were piece-raters, and, if so, how many of them were there, would have been very material, even if there was short supply of yarn. An examination of the pay books of the employer, if produced, may have been sufficient for the purpose, and that would have taken very little time. There is, besides, a patent fact, namely, there would be the necessity of keeping at least some women workers if production be on a restricted scale on account of short supply of yarn, because we were told by the respondent's advocate that all sewing work is done by them and not by the male workmen.

We, therefore, allow the appeal and discharge the order. It is desirable that the adjudication of the disputes referred to the Tribunal by the West Bengal Government under Section 10 of the Act be completed as quickly as possible. The respondents must pay to the appellants the costs of the appeal which we assess at Rs. 51 to be paid within three weeks from the date of this order. Each party will bear the costs of the application for stay.

We had discharged the stay application on the ground that it had become infructuous by reason of the fact that the employer had already discharged the workmen by a notice on the strength of the permission granted before the day when the stay application was made. We are not called upon to express our opinion, nor are we in a position to do so in the absence of sufficient materials, as to the reliefs the workmen would be entitled to in these circumstances. The workmens' right to take appropriate steps in the matter remains unaffected by our judgment.

J. N. MAJUMDAR,
Chairman.

R. C. MITTER,
Member.

Appeal No. 14 of 1950

The Upper India Sugar Mills Ltd., Khatauli, Dist. Muzaffarnagar, U.P—Appellants.

Versus

The Upper India Chini Mills Mazdoor Union Khatauli, Dist. Muzaffarnagar, U.P—Respondents.

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. J. R. Bhargava & Mr. H. S. Brar.

For the Respondents.—Mr. H. N. Bahuguna.

State.—Uttar Pradesh.

Industry.—Sugar.

Lucknow, the 18th November 1950

DECISION

The Upper India Sugar Mills Ltd. reopened on the 2nd of December, 1949, for the season 1949/50. Notice of the reopening of the Mills was previously given, to the effect that the entire Mill would start working on that date. On the 2nd December, 1949 a number of workmen reported themselves for duty. These workmen, who are the workmen concerned in this appeal, attended the factory during the whole of the second half of the last preceding season, that is to say, the season 1948/49. They were not put to their respective jobs on that date but were taken in gradually later on. They were given work, all of them, within 5 days of the 2nd December 1949. The management refused them wages from the 2nd of December till the date when they were actually taken in. The subject matter of the appeal concerns wages for that short period. The Conciliation Board gave the adjudication in favour of those workmen. On appeal the award of the Board was confirmed by the Industrial Court (Sugar), Lucknow, by its award dated the 10th July, 1950. This was enforced by an order of the State Government dated the 25th of July, 1950. Against this award the present appeal has been preferred. The Provincial Government issued a general order No. 6308(ST)XVIII/26-(ST)-1947, dated Lucknow the 23rd October, 1948, in the exercise of powers conferred on it by clause (b) and (c) of section 37 of the United Provinces Industrial Disputes Act '47 (Act No. 28/1947) Paragraph (1) of the annexure : that order is relevant for purpose of this appeal. That

paragraph runs thus "A worker who has worked or but for illness or any other unavoidable cause would have worked in a factory during the whole of the second half of the last preceding season will be employed in this season in such a factory". This order was renewed for the season 1949/50. It is not disputed before us that the workmen concerned had worked in the factory during the whole of the second half of the preceding season, namely, season 1948/49. Therefore, these workmen had fulfilled the condition precedent. The whole appeal depends upon the interpretation of the phrase "will be employed in this season in such factory". In our judgment, the meaning of the phrase "Employed in this season" means in that season and for that season, that is to say, for the whole of that season. If the intention had been otherwise, as has been contented for by the Management in this case, the proper phrase to employ would have been either "Employed *within* this season" or "Employed *during* the season". We accordingly, in accordance with this general order issued by the Government decide that those workers who had satisfied the condition precedent were entitled to be put in their jobs from the date the season started. All the workmen concerned in this appeal were present on the 2nd of December and expressed their willingness to work on their jobs. They are accordingly entitled to their wages for the period beginning from the 2nd December, 1949 in addition to the wages already paid to them, that is to say, wages for the period 2nd December, 1949 till they were actually taken in. The result is that this appeal is dismissed with cost of Rs. 25.

R. C. MITTER,
President.
G. P. Mathur,
Member.

Appeal No. 59 of 1950

Lord Krishna Sugar Mills Workers Union, Ambala Road, Saharanpur.—Appellant.

Versus

Messrs. Lord Krishna Sugar Mills Ltd., Ambala Road, Saharanpur—Respondent.

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellant.—Mr. B. K. Sastri, Secretary, Behar Sugar Mill Workers' Federation.

For the Respondent.—Mr. Pyarilal Sud, Manager.
State.—Uttar Pradesh.
Industry.—Sugar.

Lucknow, the 24th November 1950

DECISION

The aforesaid Labour Union preferred a claim for fuel on behalf of the workmen marked in lists B & C. Its case was that these workmen were getting fuel from the Company in terms of an agreement arrived at between the Labour Union and the company on the 9th February, 1947, but from April, 1950 the Company stopped the fuel supply to the workmen mentioned in list B and gave lesser quantity to the workmen marked in list C. The Company resisted the claim. There were other differences between the Union and the Company, which need not be detailed here as being unnecessary to the appeal.

The Regional Conciliation Board (Sugar) Meerut, to which the dispute about fuel and the other disputes were referred for adjudication, by its award dated the 20th June, 1950 upheld the claim of the Union in this respect and directed the company to give those workmen double the quantity of the fuel to which they were entitled under the said agreement for the period during which they did not receive any supply or short supply, from the Company as the case may be.

The Company filed an appeal to the Industrial Court (Sugar), Uttar Pradesh, Lucknow, against that award. On this issue, that Court held that the workmen marked in list C were entitled to get fuel according to that agreement but those marked in list B were not so entitled. That Court further held that the workmen marked in list C were entitled only to the quantity to which they were entitled to under that agreement and withheld from them, and that the award of the Board giving them double quantity thereof, could not be supported. It accordingly made the award in favour of the workmen marked in list C only.

No appeal has been preferred before us by the Company but the Labour Union has filed this appeal and the only question is whether the workmen marked in list B are entitled to get the quantity of fuel in terms of the said agreement from the Company. The Union concedes that it cannot lay claim on their behalf to double the quantity. The question, therefore, depends upon the construction of that agreement.

A preliminary objection was raised before us by Mr. Sud representing the Company regarding the competency of the appeal. He contends that no appeal lies as the case does not fall within clause (IV) of Section 7(1) (b) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is doubtful as to whether the case falls within that head, but we are of opinion that the appeal lies by virtue of the provisions of Section 7(1)(a) of that Act. The question of construction of a document which is the foundation of a claim in the proceedings has always been held to be a question of law and in view of the character of the memorandum of agreement on which the claim for fuel rests, we hold that the question of law is a substantial one. We accordingly overrule the preliminary objection and proceed to decide the appeal on the merits.

It appear that as a result of disputes and differences between the management and the workers a notice of strike was given and the worker went on strike and the disputes were referred to an adjudicator. The parties then came together and arrived at an agreement and a memorandum of the agreement was drawn up and signed by a Director of the Company, by a representative of the employees and by the adjudicator on the 9th February, 1947. That agreement dealt with the following matters in separate paragraphs numbered thus namely : (1) wages, (2) bonus ; (3) discharge of workmen of the Engineering and Manufacturing departments who were members of the Labour Union ; (4) fuel, (5) overtime allowance, (6) holidays, (7) treatment of employees by the Management, (8) manner of distribution of the sugar quota amongst the employees, (9) medical treatment. (10) payment of wages during the strike period. The last paragraph (11), contained a promise from the workers to the effect that they would not go on strike.

It is quite clear to us from the terms of the agreement that the subject matters of agreements mentioned in paragraph (1), (3), (4), (5), (6), (7), (8) and (9) were of a general nature and were to be applicable not only to the workers then working in the factory but to all workers of the factory who would be taken in later on by the Company. This is apparent not only from the language used, but also from the nature of the subject and the contrast between those paragraphs and paragraphs (2) and (10).

Paragraph (4) deals with fuel. It runs thus :—"The quantity of fuel will be distributed as under :—

(a) Coolies—One maund each.

(b) Mates, Drivers, Asstt. Fitters and Asstt. Mates —Two Maunds each.

(c) Fitters, Supervisors, Turners Welders, Moulders and Laboratory Chemists—Three maunds each.

(d) Incharge Mill-house, Boiler-house, general and Supervisors—Four Maunds each.

(e) This fuel will be in lieu of wood allowance and it will be at the option of the workers to accept wood or wood allowance. All coolies will be given the above mentioned fuel free of all costs which will be over and above the actual pay and allowance in accordance to the U.P. Gazette".

We have already expressed our views that this paragraph applied to existing workers and those who may be taken in future.

Clauses (a) to (d) are unambiguous and define precisely the categories of workers who would be entitled to fuel and the quantity to which they will be entitled. If those were the only clause there would not have been any doubt or difficulty. The real point is as to what is the meaning of clause (e)

The management contends that that clause controls all the earlier clauses (a) to (d) and the meaning is that only those persons who were then getting fuel allowance or would be entitled to get fuel allowance were to get fuel if they fell within the categories defined in clauses (a) to (d). The Labour Union on the other hand contends that that clause has not that qualifying effect but was put in with this object, namely, to make it clear that either fuel or fuel allowance is to be given to those workers and the workers were to have the option of either taking the fuel or the fuel allowance.

We prefer the construction contended for by the Labour Union. The acceptance of the contention of the employers, besides having the effect of adding words to clause (e), would result in discrimination and may raise discontent among workmen and so lead to breach of industrial peace. Thus the main object of the agreement which was to establish industrial peace would be furstrated. Moreover, as this paragraph of the agreement defines the rights of workers who may be taken in by the company after the date of the agreement the construction suggested by the company would lead to unreasonable results, for there being no fixed rule in the company as to whom fuel allowance is to be given, it would be in the arbitrary power of the company to deprive future workers of the benefit of the agreement embodied in this paragraph by not admitting them to fuel *allowance*.

We accordingly hold that workers of list B are also entitled to fuel according to the scale mentioned in paragraph 4 of the agreement for the period of the working season during which they did not receive supply of fuel from the company.

The appeal is accordingly allowed with costs to the appellant assessed at Rs. 50

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. 110 of 1950

Dyer Makin Brewries Ltd., Daliganj, Lucknow —Appellants.

Versus

The Distillery & Brewery Workers Union Lucknow, through Shri Ganga Bishun Misra, Ganeral Secretary —Respondents.

In the matter of an appeal against the award of the Adjudicator, Uttar Pradesh made on 2nd September 1950.

Lucknow, the 25th November 1950

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. Khullar, Labour Officer.

For the Respondents.—Mr. J. Dikshit, Vice Chairman.

State.—Uttar Pradesh.

Industry.—Miscellaneous.

DECISION

One of the matters referred to the Adjudicator Mr. K. K. Pande, was whether the newly formed Trade Union called The Distillery & Brewery Workers Union, Lucknow, have the right to compel the employers to recognise it. The Adjudicator gave his award on that point in paragraph 26 of his award in the following terms :—

> "This Union is the only registered union in this concern and is affiliated with Indian National Trade Union Congress which is a recognised workmen's organisation at present. This Union also has got a large following in this concern. I, therefore, recommend that the employers should recognise this Union for all intents and purposes".

It is against this paragraph of the award that the Company has preferred this appeal and its contention is that the Adjudicator had no jurisdiction to adjudicate upon this matter. We must give effect to the contention for the following reasons.

The obligation on the part of the employer to recognise a Trade Union is the creation of statute. To put in other words, the right to have recognition by the employer is the right conferred by statute, namely, the Trade Unions Act No. XVI of 1926, as amended by Act No. XLV of 1947. That amendment introduced Part III-A into the parent Act. That part consists of Section 28A to 28I. Section 28B provides for the appointment by the appropriate Government of such number of Labour Courts as it considers necessary, consisting of one or more persons. The qualification of the members of that Court to be constituted under that Section is also laid down there namely, a Judge or ex-Judge of a High Court or a District Judge or a person qualified for appointment as Judge of a High Court. To the last part, there is a proviso that in such a case the appointment is to be made in consultation with the High Court of that State, in which the Labour Court has or is intended to have its usual place of sitting. Section 28C provides for recognition of a trade union by consent of the employer. Section 28D defines the conditions that must be fulfilled before recognition can be forced upon the employer and 28E confers upon the Labour Court the jurisdiction to decide the question whether a particular Labour Union is to be recognised by the employer or not, if the employer had not agreed to recognise it. The position, therefore, is that a new right, namely, of a Trade Union to be recognised or to be more accurate, a new obligation on the part of the employer to recognise a Trade Union was created by the Trade Union Act as amended. This obligation is the creation of statute, namely, the Trade Unions Act. Accordingly, the remedy which is provided for in the Act in case the employer refuses to recognise a Trade Union is to be taken to be the *exclusive* remedy. This principle has been well established. It comes within the third proposition laid down by Wilies J. in the well known case of the Wolverhampton New Water Works Co. Vs. Howkesford in Common Pleas (6 C.B. (N.S.) Page 337). The same case is reported in 141 English Reports Page 486. The relevant passage occurs at Page 356 of the original report and Page 495 of the English reprint. We hold that only the Labour Court constituted under Section 28B of the Trade Unions Act has jurisdiction to decide the matter. On this ground we allow the appeal and set aside that part of the order of the Adjudicator which has recommended recognition of the Union by the employers. We make no orders for cost.

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. 98 of 1950

The Lord Krishna Sugar Mills Ltd. Nakur Road, Saharanpur—Appellants.

Versus

The Lord Krishna Sugar Mills Workers Union, Nakur, Road, Saharanpur—Respondents.

In the matter of the Industrial dispute between the concern known as the Lord Krishna Sugar Mills Ltd. and its employees, regarding the award of the Conciliation Officer, Uttar Pradesh published in Uttar Pradesh Gazette dated the 16th September 1950.

Lucknow, the 27th November 1950

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. Pyarilal Sud and Mr. Siv Prasad, Manager and Managing Director.

For the Respondents.—Mr. B. K. Shastri, Gen. Secy., U.P. and Behar Sugar Workers Federation.

State.—Uttar Pradesh.

Industry.—Sugar.

DECISION

The subject matter of this appeal relates to the discharge of fiftyone workmen out of a larger number of workers whom the company had discharged on the termination of the crushing season of 1949-50. Two of them are servants or peons of the Chief Chemist and of the Chief Engineer of the factory and the only question about them is whether they were personal servants of those two officers or employees of the Company attached to those two officers.

The remaining forty-nine persons were workmen employed in the factory and the question about them is whether all or any one of them were permanent or seasonal workmen. They were all discharged without notice. If they were seasonal workmen their discharge was valid according to Standing Order No. I(3) but if they were permanent ones, the discharge was unjustified, because they would come under Standing Order No. L(1) and could not be dismissed from service in the manner adopted by the Company.

The dispute relating to the validity of the discharge of the workmen was referred to the Regional Board of Conciliation (Sugar), Meerut by an order of the Uttar Pradesh Government made under Section 3 read with Section 5 of the U.P. Industrial Disputes Act for adjudication of other disputes of workmen of other sugar factories which had already been referred to the said Board by other orders. The Board made enquiries in respect of this dis-

pute between March and April, 1950. Arguments were heard on the 11th April, 1950 and the passing of the award was reserved. The same day, that is on the 11th April, 1950, the said Government issued an Order, 1109 (ST)/XVIII-171(ST)-49 by which the proceedings before the Regional Conciliation Board were quashed and the dispute was referred for adjudication by the Labour Commissioner or by an adjudicator to be nominated by him. The Labour Commissioner nominated Mr. J. Prasad to make the adjudication. Mr. J. Prasad divided the workmen into six groups, A to F, and considered their cases separately according to groups. The award which he made in respect of the workmen falling within groups B to F have not been challenged by either party in this appeal. The fiftyone persons with whom we are concerned in this appeal fall within Group A. He made an award in their favour by ordering their reinstatement. The Company has appealed against the award.

A preliminary objection about the competency of the appeal was raised on behalf of the respondent, the contention being that no appeal lay as the case did not fall within any of the subjects enumerated in Section 7(1)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950. They contend that clause (iv) of that Sub-section which speaks of retrenchment of workment would not cover the cases of discharge or dismissal of workmen. The Appellants' representative contended that the word 'retrenchment' has been used there in a general sense and so would include discharge and dismissal. This by itself raises a question of construction of the Statute, and so a question of law and a substantial one too and to the appeal would have been competent under clause (1)(a) of that Section. W do not propose to decide this point for other questions of law of general importance have been raised in support of the appeal which are indicated below and which we propose to decide.

Those points of law are as follows :—

(1) the State Government had no power to quash the proceedings then panding before the Regional Conciliation Board (Sugar), Meerut and to refer the same dispute to another authority;

(2) that, at any rate, the order quashing the proceedings before that Board was bad, inasmuch as the enquiry by the Board had been concluded before that order;

(3) that Mr. J. Prasad had no authority to take seisin of the dispute inasmuch as the Government in law could not delegate to the Labour Commissioner the power to nominate an adjudicator.

In appeal No. 60 of 1950 (Straw Board Manufacturing Co. Vs. Gatta Mill Mazdoors Union), the self same contention as is covered by the third point was raised before us, and we overruled it. It is necessary for us to repeat the reasons we gave, in that connection. We accordingly decide this point against the appellant.

The first question is of general importance. Professing to exercise the powers conferred upon it by clauses (b), (c), (d) and (g) of Section 3 and Section 8 of the U.P. industrial disputes Act, 1947, the Provincial Government made a general order, being G.O.781(L)/XVIII dated the 10th March, 1948. That order provided for the establishment of Regional Conciliation Boards and Industrial Courts in the Province, defined their constitution, the procedure to be followed by them and the functions and powers to be exercised by those authorities. Paragraph 27 of that order is as follows :—

"27. Notwithstanding anything contained in this Order, the Provincial Government may at any time by general or special order and on such terms and conditions, if any, as may be specified, withdraw, suspend or quash any enquiry or class or classes of enquiry before a Board or Boards, or order that no Board or Board shall enquire into any particular dispute or classes of disputes". The last sentence was put in, because by Paragraph 5(a) of that order an employee or a registered trade union of employers or workmen.....had been given the right to move a Conciliation Board to enquire into an industrial dispute.

The contentions of the appellants' representative on this paragraph are as follows :—

(a) that this paragraph is *ultra vires* the powers conferred on the Provincial Government by Section 3 of the U.P. Industrial Disputes Act, 1947 (hereafter called the Act), and,

(b) if it was not so, the provisions of Section 3 by which the powers are given to the Provincial Government is bad, inasmuch as it is delegation to the executive of legislative powers.

We will deal with the last mentioned contention first as it raises a question which goes to the root of the matter.

The U.P. Industrial Disputes Act was passed when the Government of India Act, 1935 was in force. "Welfare of Labour and conditions of Labour" was in the Concurrent Legislative list (Item No. 27 of the Part II of list III). Subject to the rule of repugnancy embodied in Section 107, the Provincial Legislature had the same powers of legislation over a subject in the Concurrent list for that province as the Central Government had Each of the said legislatures had plenary powers of legislation within its proper field. It has been well established that a legislature which has plenary powers can legislate in its proper field either absolutely or conditionally (Queen vs. Burah L.R. 5 I.A. 178), and in the latter case it would not be regarded as the delegation of legislative powers if discretion or power is conferred by that legislative act to some external authority, under conditions defined in the Act, as for instance, to the Governor or some other executive or other authority to carry out its legislative effects. (Russell Vs. The Queen L.R.7, A.C 829, King Emperor Vs. Banoarilal Sarma, L.R.72 I.A. 59). Section 3 of the U.P. Industrial Disputes Act, 1947, fall within the principles formulated in those cases, and so the provisions by which powers have been conferred by that Section on the Provincial Government to make general or special orders in respect of the subjects enumerated therein, subject to certain conditions, are valid and cannot be regarded as delegation of *Legislative powers* to that authority. As the Governor of the Province is the executive head of the Province those powers are to be exercised by him. We accordingly overrule this contention of the appellants.

Paragraph 27 of G.O. No. 781(L)/XVIII dated 10th March, 1948 is, in our judgement, not *ultra vires* the powers of the Provincial Government conferred by Section 3 of the Act. That Section 3 of the Act empowers the Provincial Government for certain purposes to *make inter alia provision by general order* "for referring any industrial dispute for conciliation or adjudication *in the manner provided in the order*". It had thus the power to frame general regulations concerning the *whole subject* of conciliation or adjudication of industrial disputes. It therefore, had the power to establish Conciliation Boards and Courts, define their constitution functions, powers. and prescribe the conditions under which they were to discharge their functions and exercise their jurisdiction and frame rules of procedure they were to follow. Paragraph 27 falls within some of these heads and so is valid.

It may be the enquiry by Regional Conciliation Board had in this case been completed but the proceedings before it had not terminated on the 11th April, 1950, as the award had not been given. The case before us, therefore, is more like the case of withdrawal of proceeding from the Regional Conciliation Board. In any event as we have held that paragraph 27 of the said G.O. is valid, the Provincial Government had the power to quash proceedings and it had exercised that power in this case.

We will now proceed to decide the case on the merits. We agree with the Adjudicator that Kishan Chand and Sant Ram were not personal servants of the Chief Chemist and of the Chief Engineer, but were their office peons. Those officers were entitled to servant-allowance from the company, that is, to keep servants for their personal necessities at the expense of the company. But the peons concerned were being paid by the company and at the same time the servant-allowances were being paid to those two officers. In these circumstances the peons can only be office peons attached to those officers to assist them in the discharge of their official duties. With regard to the remaining 49 workmen the question is whether they were permanent or seasonal workmen. The best evidence would have been furnished by showing whther they were employed in jobs which were of a permanent nature. But their cases cannot be judged on this criterion, for the company has not issued service cards to any of their workmen. Moreover, it appears from the evidence that many of the workmen were placed on different jobs from time to time. Other factors, therefore, will have to be taken into consideration. Those factors, which have been established by evidence, are :—

(1) Most of them were engaged in the off-season of 1947-48 and some were engaged in the off-season of 1948-49.

(2) They worked in the following off-season and in the crushing seasons continuously till they were discharged without notice on the 20th March, 1950.

(3) The explanation given by the company that they were kept employed in all those off-seasons for repairs and overhauling of the machinery which had been over-worked or badly handled by the Sugar Syndicate has not been established.

(4) An agreement made between the Management and the workmen on the 8th March, 1948 provided for different rules for leave of permanent workmen and of seasonal workmen. These workmen were given leave under the rules applicable to permanent workmen.

We hold that the cumulative effect of these facts is that they were permanent workmen. The appeal is accordingly dismissed with costs assessed at Rs. 50.

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. 68 of 1950

Elgin Mills Co. Ltd. Kanpur.—Appellants.

Versus

The Suti Mill Mazdoor Union, Kanpur—Respondents

In the matter of an appeal against the decision of the President, Industrial Court (Textiles & Hosiery), U.P. Kanpur made on 14th September 1950 in appeal No. 55/50 of the said court in respect of the award given by Regional Conciliation Board (Textiles), Kanpur in the industrial dispute between Elgin Mills Co. Ltd., and Suti Mill Mazdoor Union, Kanpur.

Lucknow, the 28th November 1950

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. Hoon, Director of the Company.

For the Respondents.—Mr. C. P Verma, Member, Executive Committee of the Union.

State.—Uttar Pradesh

Industry.—Textiles.

DECISION

Shri Panna Lall Pathak was employed as a clerk in the Record Department of the Company in the year 1941. The certified Standing Orders applicable to clerks became operative on the 1st July, 1948. On the 20th November, 1948, he was found collecting money within the factory premises for a purposes not sanctioned by the Manager, namely, for the purpose of forming another Trade Union of workmen. Under Standing Order No. 23(i) this amounted to misconduct and so the company could under Standing Order No. 24(i) either suspended him for a period not exceeding 4 days or dismiss him from service. Standing Order No. 24(iii) provides that a clerk could be suspended or dismissed only after he is informed in writing of the alleged misconduct and giving him opportunity to explain the circumstances alleged against him. That Standing Order also provides that in awarding punishment the Manager *shall* take into account the gravity of misconduct, the previous record, if any, of the clerk and any other extenuating or aggravating circumstances that may exist.

After a preliminary enquiry Panna Lall was informed of the charge against him on the 14th December 1949 and was asked to submit his explanation on the 15th December following. On that day, he appeared before the Manager, but refused to give his explanation on the ground that the conditions under which he was prepared to give his explanation had not been complied with by the Manager. The papers were thereafter sent by the Manager to the Conciliation Board with the prayer that the Board may be pleased to accord permission to dismiss him. On the 4th January, 1949, the Board gave permission and he was dismissed on the 10th January, 1949. In the meantime, Panna Lall had preferred an appeal to the Industrial Court against the order of the Board by which permission had been granted, but that appeal was rejected on the 18th August, 1949 as being incompetent.

After his dismissal the Labour Union made an application before the appropriate Conciliation Board under paragraph 5(a) of G.O. No. 781(L)/XVIII dated the 10th March 1948, raising an industrial dispute, namely, his non-employment. The Board found that he had collected money within the factory premises for an unauthorised purpose but dismissed the application on the ground that it was not maintainable as Panna Lall had not in the first instance approached the Works Committee. He did in fact make an application on the 25th August, 1949 to the Work Committee for redress but the Works Committee did not entertain it on the ground that it was filed long after the time prescribed in proviso (i) to paragraph 14(5) of G.O. No. 91(LL)/XVIII-4(LL)-49 dated the 9th February, 1949 and that this application was not taken to a compliance of paragraph 24 of the said Government Order. Against the Board's order the Labour Union filed an appeal to the Industrial Court, Kanpur. The President of that Court held that Panna Lall had made unauthorised collections within the factory premises on the said date but that paragraph 24 of the aforesaid Government Order did not operate as a bar to the entertainment of that Industrial dispute by the Regional Conciliation Board. He, however, held that the punishment imposed by the Management was too harsh. He accordingly ordered his re-instatement within two weeks, but without compensation. The single assessor who was present at the hearing was, however, in favour of the dismissal of the appeal.

The company has filed this appeal. The Labour Union has not appealed against that part of the award which had refused Panna Lal compensation.

Mr. Hoon, a director of the Company, appeared before us in support of this appeal. Mr. Verma, appearing for the respondent, urged that he, though a director of the company was not competent to appear on its behalf. We overruled the objection, and allowed Mr. Hoon to continue stating at the same time that we would give our reason later on.

We will, therefore, take up this preliminary point.

The respondents' contention is that an employer can be represented by the class of persons enumerated in Section 33(2) of Industrial Disputes, (Appellate Tribunal) Act, 1950 and also by a lawyer subject to the conditions mentioned in subsection 3 and by none else. We cannot accede to that contention. Leaving aside representation by lawyers for the moment, that section enacts that a party to an appeal *shall* be *entitled* to be represented in an appeal by the three classes of persons mentioned in subsection (1) in the case of workmen and three classes of persons mentioned in subsection (2) in the case of employers. These two subsections confer a privilege as the phrase "shall be entitled" indicates, and the meaning is that if any person falling within those classes appear in the appeal either for the workmen, or for the employer the other party would not be entitled to object to his appearance.

Undoubtedly the workman concerned in an appeal could appear in person, though he is not mentioned in sub-section (1) and likewise the employer when is a natural person can himself appear in person. A corporation being an artificial person must, of necessity, appear through a human being. It can, therefore, appear through an agent or by any other authorised person, the only limitation being that when that person is a Lawyer and appears in his capacity as lawyer, he can appear only if the condition of sub-section (3) are fulfilled. A Director of a Company, we hold, has authority by reason of his position to appear for the Company.

The points raised by Mr. Hoon appearing for the appellant in support of the appeal are :—

(1) that the proceedings for adjudication of the dispute relating to the dismissal of Panna Lal Pathak was not maintainable in law in the Regional Conciliation Board and so neither the Board nor the Industrial Court had powers to adjudicate the matter ;

(2) that, at any rate neither the Board nor the Industrial Court had in law the power to interfere with the punishment awarded by the Management in terms of the Standing Order ; and

(3) that, even if those authorities had the power, the order of dismissal passed by the Management ought not to have been interfered with by the Industrial Court in this case.

G.O. No. 91(LL)/XVIII-4(LL)-49, dated the 9th February 1949, makes provisions for the establishment of Works Committee consisting of Employers' and Employees' representatives and *inter alia* defines its powers and enumerates the subjects which are, to be

dealt with by it and also lays down the procedure. Paragraph 24 says that :

> "No dispute between the employer and the workmen of a concern may be taken by the either party to the Labour Commissioner, United Provinces or to Government or to the Conciliation Machinery set up by the Government *until the procedure above described has been tried but has failed to bring about a settlement.*"

There is a proviso to that paragraph but it is not material to the appeal. That proviso saves the power of the Government, the Labour Commissioner or Regional Conciliation Officer to refer under paragraph 5 (b) of G.O. No. 781(L)/XVIII, dated 10th March, 1948 an industrial dispute to the Conciliation Machinery set up either for conciliation or adjudication.

Mr. Hoon relies on this paragraph to support his contention.

We have already mentioned that in this case Panna Lall made an application to the Works Committee but that Committee did not go into it, on the ground that it had been made beyond the time prescribed in the first proviso to paragraph 14(5) of this Government Order. Accordingly, we proceeded upon the assumption that for the purposes of paragraph 24, that application is not to be taken into account, with the result that it is to be taken that neither Panna Lall nor the Labour Union had "tried the procedure laid down in Government Order No. 91 (LL)-XVIII-4(LL)-49, and had failed to bring about a settlement".

The bar imposed by paragraph 24 would obviously apply only if the consideration of this industrial dispute, which concerns the dismissal of Panna Lall, fell within the province of the Works Committee. This is the vital question.

Mr. Hoon contends that this dispute falls within the province of the Works Committee and to support it he relies upon (1) paragraph 1(ii) (2) upon paragraph 2(c) of that order.

Paragraph 1 mentions the object of the Order and he relies upon the phrase "to enforce regulations contained in collective agreements drawn up by Recognized employers" Organisation and the Recognized Workmen's Organisation", and asks us to hold that a Certified Standing Order is a document which is the result of collective agreement. Apart from the fact that objects stated in the preamble of a statute cannot control the enactment, when is clear, we cannot accept his contention that a Certified Standing Order embodies a collective agreement between the employer and the employee. A reference to the provisions of the Industrial Employment (Standing Orders) Act, XX of 1946, would show that agreement is not the essence of a Certified Standing Order.

Paragraph 2 of the Government Order says that "matters to be dealt with by the Works Committee shall ... as amongst others :

> (c) settlement of grievances relating to or arising out of the terms and conditions of employment of the workman".

Mr. Hoon's argument is that the subject of dismissal of a workman falls within" the terms and conditions of employment of a workman". We cannot accede to this contention. The power of a master to dismiss a servant for misconduct does not necessarily flow from the terms and conditions of employment, but is a part of the law of Master and Servant. The relevant provisions of the Standing Orders have been made for the purpose of checking abuse of that power which *in law* belongs to the master by defining what is to be considered as misconduct on the part of a clerk and by laying down the procedure that must be followed before that power is exercised.

There is an additional reason why we cannot accede to the contention of Mr. Hoon. This G.O. was issued by the Provincial Government under the powers conferred upon it by Section 3 of the U.P. Industrial Disputes Act, 1947. That Act incorporated the definition of "Industrial Dispute" as given in the Central Act of 1947. So the Provincial Government knew that definition. That definition when analysed comes to this, that it must be a dispute or difference

(1) between the following parties :
  (a) Employers and employers,
  (b) Employer and Workmen,
  (c) Workmen and workmen, and
(2) the subject matter of the dispute or difference must be connected with :
  (a) employment or non-employment or,
  (b) the terms of employment or the conditions of labour of any person.

It is pertinent to observe that the language of paragraph 2(c) of the Government Order closely follows the language of the definition which defines the subject matter as indicated by us under sub-heading (b) and that the subject matter indicated in sub-heading (a) has been omitted, and we hold that it was deliberately omitted by Government. The last clause, namely, clause (i), give further clue to the intention of Government relating to the general functions of Works Committees.

We, therefore, hold that the subject of "employment or nonemployment", which would include the case of dismissal is not within the province of the Works Committee.

There can be no two opinions on the point that the punishment of employees is *prima facie* a management function, and the Court of Tribunal should not *ordinarily* interfere with that management function. That view was expressed by Hornwell J. in the passage quoted with approval by the First Industrial Tribunal, Madras, in Industrial Dispute No. 10 of 1948 (Fort St. George Gazette dated June, 27, 1950 page No. 2200 at 2204). But it is equally clear that the Court or Tribunal would have the power to interfere in cases where there was unfair labour practice, victimisation or violation of the principles of natural justice (The workmen employed in Tezpur Baliapara Railway Company *Vs.* Their Employers—Gazette of India, dated July 25, 1949 p. 1251 at 1259). These decisions recognise that in some cases the Court or Tribunal can interfere with this management function. It may be a mooted question as to whether the Court or Tribunal can interfere with the punishment awarded on the simple ground that it was harsh or excessive, but on the facts of this case it is not necessary for us to decide the point, although the adjudicator made the award on the assumption that he had the power to alter the punishment on the ground that in his opinion it was too severe. In the Standing Order on the basis of which action was taken against Panna Lall there is the provision that in awarding punishment the manager shall take into account the gravity of misconduct, the previous record of the clerk, and any extenuating or aggravating circumstance. Apparently this rule was not followed in this case, for the offence of Panna Lall was not a grave one. We may say that it was of a trivial nature, though it may not have been not to the liking of the manager or the company. In his statement before the Conciliation Board on 10th July, 1950, Panna Lall averred that he joined the service of the Company in 1941 and there was no complaint against him, but on 26th July 1947 the Elgin Mills Clerks & General Staff Union came into existence of which he was the Secretary, and on account of his activities in that connection he came into conflict with the Company. He then deposed that the Company had lodged a complaint for bribery against Shri Ansari, Asst. Weaving Master and that he had conducted the defence for him; that the Company had dismissed some 300 employees including the deponent without obtaining necessary permission and that they had to be reinstated shortly after on the attention of the Adjudicator was drawn to it and the company realised its mistake.

Panna Lall further stated that on the night of 14/15th January, 1948, Farman Ali Subedar had beaten a chaprasi with shoes and as that chaprasi was a member of the Union, the latter took up his case and Farman Ali was fined Rs. 200 by Shri Ahmed Hussain, Hony. Magistrate in spite of his side being taken by the Company. From a recital of these instances it seems clear that Panna Lall was not a *persona grata* with the Company and it was that fact which led the Company to inflict the higher punishment of dismissal in a case like this. We have to take his deposition into account in deciding whether the punishment can be maintained.

His service book apparently did not contain adverse remarks of a substantial nature. His refusal to give an explanation cannot be considered to be an act of contumacy. He may have reasonably believed that the four men who were kept attending by the Management at the time when he came into the office to offer explanation, were kept at hand for an ulterior purpose, and the memorandum made and signed by those persons was also made for a like purpose. The statement made by Panna Lall shows that he was being persecuted by the Management and his dismissal was very like victimisation for his past activities which were perfectly legitimate though not to the liking of the Management. For these reasons we maintain the award. The result is that this appeal is dismissed with costs assessed at Rs. 50.

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Calcutta, the 10th August 1951

No. LA.1(4)/2998.—In pursuance of Section 8(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950, (No. XLVIII of 1950) it is hereby notified that a Bench of the Labour Appellate Tribunal of India will sit at Ernakulam from 3rd September, 1951

No. LA.1(4)/3001.—In pursuance of Section 8(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950, (No. XLVIII of 1950) it is hereby notified that a Bench of the Labour Appellate Tribunal of India will sit at Bombay from 14th September, 1951.

J. N. MAJUMDAR,
Chairman,
Labour Appellate Tribunal of India.

Appeal No. 32 of 1950

Sahitya Mandir Press Ltd. Lucknow—Appellants.

Versus

1. U.P. Government, through the Secretary, Labour Dept Lucknow.
2. Secretary, Lucknow Rashtriya Press & Book Depot Workers Union, Lucknow.
3. Ram Asrey Compositor S/o Bhagwan Deen, resident of Ganeshganj, Lucknow.
4. Ram Saran Compositor S/o Ram Nath, resident of Ganeshganj, Lucknow.
5. Mukat Behari, Compositor, S/o Brij Bahadur, resident of Maulviganj, Lucknow.

} Respondents.

In the matter of an appeal the award of Mr. K. K. Pande, Conciliation Officer, Uttar Pradesh made on 21st April 1950 and published by the Government of Uttar Pradesh Labour Dept. No. 1348(ST)/XVIII-63(ST)/50 dated the 25th May, 1950.

Lucknow, the 5th December 1950

Present

R. C. Mitter, Kt., President.

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. M. P. Srivastava.

For the Respondents.—For Respondent No. 1 Mr. S. B. Haikerwal, R.C. Officer and 2 to 5, Mr. J. C. Dikshit, Scy. I.N.T.U.C., U.P.

State : Uttar Pradesh.

Industry : Misc. (Press).

DECISION

In this appeal we are concerned with the reinstatement of three Hindi Compositors, namely, Sarvshri Ram Asrey, Ram Saran and Mukat Behari. These three workmen and 3 others were retrenched by the Company, a Printing establishment, on the 20th of April, 1949, on the ground that there was no sufficient Hindi composition work to keep them engaged. The matter concerning retrenchment of those six compositors was taken up before the Conciliation Officer Mr. Misra. Mr. Misra came to the conclusion that the work in the Hindi Department in the Press had fallen and therefore there was scope for retrenchment. He, however, observed that the concern had continued in employment other Hindi Compositors much junior to them. He accordingly recommended that if in future there was any vacancy in the Hindi Department, those people should be taken in first. Mr. Misra made this recommendation on the 13th of June 1949. It is a case of the workmen that within a very short time, the concern took in a new Hindi knowing compositor of the name of Shyam Sundar, with the result that these workmen again went to the Conciliation Officer Mr. Kaul on the 15th of June, 1949. Before Mr. Kaul a controversy was raised on the point as to whether Shyam Sundar had in fact been taken in, the company contending that they had no way employee of the name of Shyam Sundar, while the Union contended that he had been, as we have already stated, taken in on the 15th June, 1949. Mr. Kaul went into the matter and came to the conclusion that in fact Shyam Sundar had been newly taken in. He accordingly made his recommendation in the following manner; "The Employment of Shyam Sundar after the retrenchment of the aforesaid employees proves beyond doubt that there is no lack of work for Hindi Compositors. I, therefore, recommend that the aforesaid workers should be reinstated within a week of the receipt of this letter and they should be given full wages for the period of their involuntary unemployment". The workers in respect of whom this recommendation made Mr. Kaul were the three person, Sarvshri Ram Asrey, Ram Saran and Mukat Behari among those six. In spite of this recommendation, the Management, however, did not reinstate those three persons with the result that the Government of Uttar Pradesh by an order No. 774(ST)SVIII-63(ST)/50, dated 2nd March, 1950 referred this dispute along with other disputes for adjudication. The order also directed the Adjudicator to follow the procedure laid down in the Industrial Disputes Act (XIV of 1947). The Adjudicator gave his award on the issues referred to him by the said Government Order. We are not concerned in this appeal with any of those other issues except issue No. 7, which related to the reinstatement of the aforesaid 3 persons and 4 others. There was no order for reinstatement of the four other workmen and in regard to them there is no appeal on behalf of the Labour Union. The only point, therefore, is as we have already stated, whether the reinstatement of the aforesaid three persons with compensation for four months is a good order.

Mr. Srivastava, appearing on behalf of the Management has urged the following points before us :—

(1) that the Government Order was invalid inasmuch as there was no dispute requiring adjudication.

(2) that the adjudication cannot in law be made in the presence of the Labour Union,

(3) that the Order of reinstatement, at any rate, is bad inasmuch as the evidence on the record is not sufficient to support the findings of the Adjudicator.

(4) that, at any rate, compensation ought not to have been awarded to Shri Ram Asrey, and

(5) even if there is any defect in the evidence the matter ought to be remitted to the Adjudicator for th purposes of making an adjudication after allowing the parties opportunity to lead further evidence.

We are not inclined to accept any of these contentions.

From the facts which we have noticed in the earlier part of our judgement there cannot be any doubt about the existence, of a dispute. There was a serious dispute in regard at least to the question of retrenchment of those Hindi Compositors at the time when the Government made the order for adjudication.

Regarding the second point, the position is as follows:—

The Union was registered under the Trade Unions Act on the 27th of August, 1949, but it had not been recognised by the Management. One of the disputes referred to in the Government order is as to the question whether the Union was to be recognised by the employers or not. That was the subject matter of the issue No. 6. That issue was decided against the Union. The position therefore is that the Union is a registered Union but is not a recognised Union. In these circumstances, we have to consider the second point urged before us.

Section 3 Clause (d) of the U.P. Industrial Disputes Act empowers the Provincial Government, for the purposes *inter alia* of maintaining employment, to refer by a special order any industrial dispute for Conciliation or Adjudication, *in the manner provided for in that order.* The Provincial Government can, therefore in the order of Reference lay down the procedure to be followed by the Adjudicator. In this case, the Government Order directed the adjudicator to follow the procedure as laid down in the Industrial Disputes Act (XIV of 1947). The question of appearance or representation is, in our opinion, a matter pertaining to procedure. This is the view we have already expressed in another case. Section 36 of the Industrial Disputes Act (XIV of 1947) provides for the representations of parties. Sub-section 1 says that "A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by an Officer of a registered Trade Union of which he is a member". In our view it is not necessary that the Trade Union which is entitled to represent a workman in an industrial dispute should be at the same time an Union recognised by the Management. All that is required is that the Union should be an Union registered under the Trade Unions Act and the workman concerned in the dispute should be a member thereof. These elements are present in this case. We, therefore, overrule the second contention.

The order of Mr. Kaul was put in on behalf of the workmen concerned for the purposes of supporting their contention, that they had been wrongly retrenched. We have already quoted the relevant portion of Mr. Kaul's

order. Mr. Kaul held that a new hand, namely, Shayam Sundar had been taken in after those three workmen had been retrenched. There is no evidence on the record to show in this case that Shyam Sundar had not, in fact, been taken in as a new hand. In these circumstances, the Adjudicator was justified on the findings of Mr. Kaul, in holding that these three men had been wrongly retrenched. We cannot further accede to the request of the appellants to remit the case to the Adjudicator for allowing parties to adduce additional evidence. Both parties had the opportunity to lead evidence at the time of the original hearing. Regarding compensation, the position is this. Ram Asrey, admitted that during his period of non-employment, he was engaged as a piece rater for some-time in another printing press. If full compensation had been given, namely, for the whole period commencing from his discharge to the date of reinstatement, we would have considered this point to be a substantial one. 13 months had elapsed between his discharge and the order for his reinstatement The Adjudicator gave him as also the two other workmen compensation for a period of four months only. We do not in these circumstances see any force in the arguments advanced before by Mr. Shrivastava in the matter of compensation. The result is that this appeal is dismissed with costs assessed at Rs. 25.

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. Cal-11 of 1950

The Shakar Mill Mazdoor Union, Hardoi—Appellants

Versus

The Lakshmi Sugar & Oil Mills Ltd., Hardoi.

—Respondents

In the matter of an appeal against the award of Mr. J. Prasad, Conciliation Officer, U.P. dated 2nd September 1950 in respect of an industrial dispute between the above parties.

Lucknow, the 5th December 1950

Present :

R. C. Mitter, Kt., President,

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. H B. Srivastav, President of the Union.

For the Respondents.—Mr. Madheo Prasad, Labour Officer.

State.—Uttar Pradesh.

Industry.—Sugar & Oil.

DECISION

Three points are taken in this appeal, namely, (1) that 86 workmen who had put in more than 200 days of service and who had made applications to join the Provident Fund on the 19th August 1949, ought to have been allowed to contribute to that Fund by the Management, (2) that certain sweepers ought to have been given festival holidays and in lieu thereof, additional wages for those days, if kept on duty and (3) that extra monthly allowances ought to have been given to those persons said to have been in charge of departments during the period, 11th of December when the Chief Engineer died, and 9th June, 1949, when that post was filled up.

With regard to the first point, the position is this. The Company started a Provident Fund scheme. One of the terms of that scheme was that workmen who had put in service for 200 days or more, would be admitted to the Provident Fund, if they so desired. The Fund was an *ex gratia* institution when it was started

On the 22nd of March, 1949, however, the Provincial Government made an order No. G.O. 822(ST)/XVIII-524 (60)-1948 under the powers conferred upon it by clauses (b) and (g) of Section 3 of the United Provinces Industrial Disputes Act, 1947 The second paragraph of that order is as follows :—"Every vacuum-pan sugar factory in the U.P. shall continue to give all *existing facilities and concessions* to its workmen in addition to the wages sanctioned in the said Government Order". The next paragraph runs as follows :—"This order shall in respect of matters covered by it be binding on all vacuum-pan sugar factories in the United Provinces and their workmen and shall remain in force till the commencing of the next crushing season." That Crushing Season in this factory commenced on the 2nd of December, 1949. On the 19th August 1949, that is to say after this Government Order had been made, those workmen, who had put in service for more than 200 days and were otherwise qualified to become members of the Provident Fund according to its rules, made applications to join the Fund. Later on the Board of Directors, at a meeting held on the 15th November, 1949, turned down the applications and further resolved that in future no new entrants would be admitted to the Provident Fund. The question is whether, in view of the said Government Order, the applications of those 86 workmen ought to have been admitted or not. It depends upon the effect of paragraph 2 of the said Government Order. That paragraph created an obligation on the part of the Company which is a vacuum-pan sugar factory, to continue to give all existing facilities and concessions to workmen, from the time when this G.O. was published and upto the date when the next crushing season commenced. The option given to a workman to join Provident Fund is, in our opinion, a *facility existing* at the time when those applications of the 86 workmen were made We, are therefore, of opinion, that the Management was bound to admit those applications as they had been made after the said Government Order and before the crushing season which commenced on the 2nd December, 1949 Our order therefore, on this point is that those applicants be admitted to the Provident Fund from the date when they made the applications, namely, the 19th August, 1949 on their paying their share of the contribution from that date. It is needless for us to say that in that contingency the Company must put into their Provident Fund Account its share of contribution as from that date, namely, 19th August, 1949.

We do not, however, accept the second and third contentions urged on behalf of the appellants. The sweepers concerned were no doubt formerly employees of the factory. But they were at the relevant time working as private sweepers in the bungalows of the officers and were not doing any work in connection with the Factory. In these circumstances our opinion is that they cannot get the benefit of the previous adjudication which allowed the factory sweepers only to get festival holidays. Regarding the third point the finding is that these six men had not been asked by the Company to discharge nor did they discharge any of the duties of the late Chief Engineer. In fact on the death of the Chief Engineer another employee performed the additional duties and extra allowance was paid to him In these circumstances we cannot accept the third point urged on behalf of the appellants. The result is that the award given by the Industrial Court on appeal is modified to the extent indicated above. In all other respects the award must stand As the appeal succeeds in part each party is to bear its respective costs

R. C MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. Cal-7 of 1950

The Lakshmi Devi Sugar Mills Ltd., Chhitauni, Dist Deoria, Uttar Pradesh—Appellants

Versus

The Chini Mill Mazdoor Sangh, Chhittauni, Dist. Deoria, Uttar Pradesh—Respondents

In the matter of an appeal against the decision of the Industrial Court (Sugar) U.P. Lucknow in appeal No. 65 of 1950 of the said Court, made on 18th September 1950 in respect of an industrial dispute between the above parties.

Lucknow, the 4th December 1950

Present :

R. C. Mitter, Kt., President,

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants.—Mr. M. Y. A. Ansari, Labour Officer.

For the Respondents.—Mr. J. N. Pandey, President, Chini Mill Mazdoor Sangh.

State.—Uttar Pradesh.

Industry.—Sugar.

DECISION

The Chini Mill Mazdoor Sangh, Chhitauni, Dist. Deoria, raised an industrial dispute concerning the festival holidays to the employees in the Watch and Ward Department as also in the Medical Department of the

Lakshmi Devi Sugar Mills Ltd. a vacuum-pan sugar factory in the United Provinces. The claim was that those employees should be given the holidays mentioned in Paragraph 1 of G.O. No. 167(ST)/II/18 published on the 11th January, 1950. That section runs thus :

"every vacuum-pan sugar factory in the United Provinces shall, from the date of this order, allow the following festival holidays notwithstanding that anything contained in the Industrial Employment (Standing Orders) :—

Diwali, etc. . . . . ."

Both the Regional Conciliation Board and the Industrial Court on appeal have upheld the contention of the Labour Union. The employers have preferred this appeal against this award.

On their behalf the following question of law was raised before us, namely, that that Government Order is bad as it is repugnant to the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) which is a Central Act.

The position arises in this way : the said Government Order was passed by the Uttar Pradesh Government under the powers conferred on it by Section 3 of the U.P. Industrial Disputes Act and so it has statutory force. For the purposes of this question the order can be regarded to be a piece of legislation by the U.P. Legislature. If, therefore, there is a conflict between it and the Central Act, the provisions of the Central Act must prevail. This position is also admitted by the representative of the Union who are just before us. The question is, is there a conflict at all. In our opinion, there could not be any possible conflict, because the field is clear and occupied by the Provincial law only. The Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) does not occupy the field at all, for the United Provinces Government under the powers contained in Section 14 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), has issued a notification in the Official Gazette No. 6071(ST)/XVIII/100(ST)/48, dated September, 1946, exempting Sugar factories in that province from the operation of the Industrial Employment (Standing Orders) Act. We, therefore, cannot accept the contention urged on behalf of the appellants and must maintain the award. The result is that this appeal is dismissed with costs assessed at Rs. 25

R. C. MITTER,
President.

G. P. MATHUR,
Member.

Appeal No. 119 of 1950

Messrs. Carew & Co. Rosa Dist. Shahjahanpur, Uttar Pradesh—Appellants

Versus

The Carew & Co. Ltd. Mazdoor Union, Rosa Dist. Shahjahanpur, Uttar Pradesh—Respondents

In the matter of an appeal against the decision of the Industrial Court (Sugar) Lucknow, made on 27th September 1950 in appeal No. 68 of 1950 in respect of an industrial dispute between Messrs. Carew & Co. Ltd. and its workmen.

Present :

Mr. J. N. Majumdar, Chairman.

R. C. Mitter, Kt., Member.

Mr. G P. Mathur, Member.

Appearances :

For the Appellants.—Mr. Mahadeo Prasad. Labour Officer, Messrs. Carew & Co.

For the Respondents.—Mr. H. N. Bahuguna, General Secretary, The Carew & Co. Ltd. Mazdoor Union.

State.—Uttar Pradesh.

Industry.—Sugar.

Lucknow, the 2nd December 1950

DECISION

In this appeal we are concerned with 27 workmen whose names are mentioned in the list attached to the award of the Regional Conciliation Board. The Labour Union raised an industrial dispute in which it claimed that the said workmen were to be declared as permanent workmen of the concern and should be given compensation for non-employment during the off-seasons in 1946, 1947 and 1948.

The facts relevant to the appeal are as follows :—

All those 27 workmen were admitted seasonal workmen. They, however, had been employed not for the whole but for a part of the off-season in 1946 for the purpose of repairing and overhauling the machinery. On the basis of that work, they claimed to be permanent workmen of the concern.

It is not disputed that they worked throughout the whole of the crushing season 1945/1946 ; that they also worked, as we have already stated, during a part of the following off-season in 1946 ; that they were also employed in the immediately following crushing season 1946/47 and on the close of that season they were not put on work in the factory in the immediately following off-season, that is to say, the off-season in 1947 ; that they were not given any work in the following off-seasons of 1948 and 1949, but were employed continuously in the crushing seasons of 1948/49 and 1949/50.

The Regional Conciliation Board by its award declared them to be permanent workmen and awarded them full compensation in the shape of full wages, etc., during the period of their non-employment in the off-seasons, 1947, 1948 and 1949. On appeal the Industrial Court confirmed the award of the Regional Conciliation Board. The Company has preferred this appeal against that award.

The controversy in the appeal depends primarily upon the construction of Government Order No. 1149(ST)/XVIII 90(ST)-47, dated Lucknow, June 26, 1947, which was relied upon by the Courts below in making their awards. The relevant portions of that order is as follows :—

(1) "no permanent employee of any sugar factory shall be dismissed or discharged for any reason other than misconduct duly investigated and dealt with after the employee has been given an opportunity to defend himself :

(2) no permanent employee of any sugar factory shall be retrenched pending the decision of the United Provinces Labour Enquiry Committee or any other person or body duly appointed by the Governor, on the question of the number and class or classes or permanent employees which each sugar factory in the province shall employ ;

(3) *for the purposes of this order* the term "permanent employee" shall mean a person who was, except for compulsory or other leave according to the practice prevailing in any particular factory, continuously employed in the factory in the off-season in 1946..... .....or was *during* the off-season in 1946, employed on repair, overhauling or other work intended to put the machinery in working order for the ensuing season ;

(4) all dues accruing under the terms of the memorandum of agreement drawn up before the Conciliation Board at Meerut on May 18, 1947 and published with Notification No. 890(ST)/XVIII-96(ST)-47, dated June 18, 1947, shall be payable to all "permanent employees" as defined in Clause (3) above".

The memorandum of agreement referred to in this clause was arrived at between the employers and employees on the 8th April, 1948 and was accepted by the Conciliation Board on the 18th May following. The first question relates to the construction of paragraph 3 above. It consists of two parts. Under the first part an employee who was continuously employed in the off-season in 1946 was to be regarded as a "permanent employee". The second part deals with an employee engaged in a particular type of work, namely, work of repairs, overhauling, etc. In the second part, the words "continuously employed in the off season in 1946" do not occur but the phrase is employed "*during* the off season in 1946". It is thus quite clear that two categories of employees were intended to be considered as permanent employees for the purposes of that order: namely, (1) an employee being in continuous employment in the off-season in 1946 and (2) an employee doing a particular type of work during the said off-season though he may not be in continuous employment. If an employee engaged in that off-season in that particular type of work mentioned in the second part of that paragraph was required to be continuously employed in the whole of that off-season the last part of paragraph 3 would be redundant, for the first part would have included him. We, therefore hold that an employee engaged in the work of repairing, overhauling or in other work intended to put the machinery in working order for the next season is to be regarded as permanent employees even if they were

seasonal employees and did not work in that off season continuously or for the whole period.

Paragraph 3 makes it quite clear that the persons falling within the two categories mentioned above would be regarded as "permanent employees" but only for the purposes mentioned in paragraphs 1, 2 and 4 of the order, *viz.*,

(1) if they are dismissed or discharged under circumstances other than those mentioned in paragraph (1),

(2) if they are retrenched during the period mentioned in paragraph 2.

they will be entitled under paragraph 4 to all dues accruing under the terms of the agreement mentioned therein.

The agreement dealt with the question of compulsory leave of permanent employees and matters relating thereto, namely,

(1) the circumstances under which the management would be entitled to put a permanent employee on compulsory leave;

(2) the period during which he could be put on compulsory leave;

(3) allowances payable during the period of compulsory leave; and

(4) other circumstances under which he would be entitled to claim money from the management. Paragraphs 5 and 6 deal with the dues accruing to those employees.

Paragraph 5 provides for payment of 50 per cent. of their consolidated wages during the period of compulsory leave and also travelling allowance in certain cases.

By paragraph 6 the provision in paragraph 5 is extended to such permanent employees of the sugar factories who were *retrenched, dismissed* or *removed* after the close of the crushing season of 1946-47, etc. In those cases the employees were to be restored to their posts with effect from the date of the so-called retrenchment, etc., and they were to be deemed to have been on compulsory leave during the period of retrenchment, etc., for the period admissible according to the settlement and for the balance of that period they were to be entitled to full wages. The meaning of the paragraph, in our opinion, is that the benefit of that clause can only be claimed by permanent employees who were *retrenched, dismissed* or *removed* after the close of the crushing season 1946-47. In the case before us the 27 workmen were not on compulsory leave; they were not retrenched, dismissed or removed. In fact, they were not given any work in the off-seasons 1947, 1948 and 1949 and were engaged in the factory in all the crushing seasons following those off-seasons. Accordingly our opinion is that they cannot claim what has been provided for in that paragraph for permanent employees. We have already pointed out that according to Government Order No. 1149/(ST)/XVIII-96(ST)/47, dated Lucknow, June 26, 1947, seasonal employees were placed on the level of permanent employees for certain purposes mentioned in that order. In our opinion, in all other respects, the rights, privileges, terms of employment and conditions of services of seasonal workmen would govern them.

Some of those 27 employees are skilled or unskilled workmen. This would appear from the list attached to the award of the Regional Conciliation Board. We need not, however, pursue this point further, because claims for retaining allowance are not the subject matter of this dispute. On the view we have expressed these employees could not be *declared* as permanent workmen *for all purposes* and so no compensation could be given to them in the shape of wages for the seasons of 1947, 1948 and 1949. Accordingly this appeal is allowed. The respondents must pay to the appellants costs, which we assess at Rs. 50/-.

J. N. MAJUMDAR,
Chairman.

R. C. MITTER,
Member.

G. P. MATHUR,
Member.

Appeal No. 18 of 1950

The Indian Sugar Mills Association, 89, Halwasiya Market, Lucknow—*Appellants.*

Vs

U .P. & Bihar Sugar Mills Workers Federation, Pan-Da-riba, Charbagh, Lucknow.

The U. P. & Bihar Chini Mills Mazdoor Federation, 3 Gopal Nivas, Sunderbagh, Lucknow.

The Indian National Sugar Mills Workers Federation, Shahanshah Manzil, Barudkhana, Lucknow, on behalf of the employees of the Member Sugar Mills of the Appellant Association. } *Respondents*

In the matter of appeal No. 18 of 1950 against the report of the Court of Enquiry, dated 15th April 1950 and published in the U. P. Government Gazette on 13th May 1950 in respect of the Industrial dispute between the Indian Sugar Mills Association and U. P. & Behar Sugar Mills Workers' Federation and others.

Lucknow the 2nd day of December, 1950

Present :

Mr. J. N. Majumdar, Chairman,

R. C. Mitter, Kt., Member,

Mr. G. P. Mathur, Member.

Appearances :

For the Appellants—Mr. H. S. Brar and Mr. C. J. Mehta.

For the Respondents—Mr. Kashinath Pandey with Mr. B. K. Sastri for U. P. Behar Sugar Mills Association.

State—Uttar Pradesh.

Industry—Sugar.

DECISION

By a Notification No. 167(ST)/XVIII, dated the 11th January, 1950, as amended by subsequent notifications, the U. P. Government constituted a Court of Enquiry, under the Industrial Disputes Act (Act XIV of 1947), hereinafter referred to as the Central Act, to enquire into certain matters, which are not necessary to mention, having regard to the view that we have taken regarding the preliminary objection as to the maintainability of the Appeal. The Court enquired into those matters and made its report containing certain recommendations on the 15th April, 1950 which was published on the 13th May, 1950 under Section 17 of the Central Act. On the 5th July 1950 by its order G. O. No. 1425(ST)(II)/XVIII-13(ST), the U. P. Government, under the powers conferred upon it by Section 3(b) of the U. P. Industrial Disputes Act, U. P. Act No. XXVIII of 1947 (hereafter called the Local Act) accepted the recommendations with certain modifications and ordered their enforcement for a period of one year. This appeal was filed on the 29th of August, 1950 against, what the Appellants have described, as the "decision of the Court of Enquiry enforced by the Government of U.P., *vide* G. O. No. 1425(ST)(II)/XVIII-13(ST), dated 5th July 1950 under Section 3(b) of the U. P. Industrial Disputes Act."

Before dealing with the preliminary objection, we should observe that even if it was conceded that this appeal was against a decision as alleged, being filed on the 29th August, 1950, it was obviously not within the time limit as prescribed by Section 10(1) of the Industrial Disputes (Appellate Tribunal) Act, (Act XLVIII of 1950), (the report having been made on the 15th April and publication having taken place on the 13th May, 1950). The Industrial Disputes (Appellate Tribunal) Act came into force on the 20th of May, 1950 and the Appellate Tribunal was constituted and rules for filing appeals were published in the Official Gazette on the 8th August, 1950. The appeal had to be filed at Bombay where Mr. Brar appearing for the Appellants went for the purpose, but fell ill. No objection as to limitation has been taken on behalf of the respondents and we are satisfied on the facts as disclosed that the appellants were prevented by sufficient cause from filing the appeal in time and as such we allowed the application of the appellants for condoning the delay and entertained the appeal.

The preliminary objection formulated by Mr. Bahuguna on behalf of the respondents is that the appeal does not lie because (1) the appeal is not against an award or a decision and (2) even if it is a decision, it is not a decision of any Industrial Tribunal within the meaning of the Industrial Disputes (Appellate Tribunal) Act of 1950.

As the report of the Court of Enquiry in this case was published before the Central Act was amended by the said Act XLVIII of 1950, we shall refer to the provisions of the *Parent Act*, as the amendments have not made any

substantial change relevant to the question which we are considering.

The Central Act provides for the establishment of a number of authorities, such as Boards of Conciliation, Courts of Enquiry and Industrial Tribunals. Under Section 10 of the Act, when an Industrial dispute exists or is apprehended the appropriate government may :

(1) refer the dispute to a Board for promoting a settlement thereof ;

(2) refer any matter appearing to be connected with or relevant to the dispute to a Court of Enquiry ;

(3) refer the dispute to a tribunal for adjudication.

In this appeal we are not concerned with the procedure and powers of Boards and no reference need therefore, be made regarding them.

A Court of Enquiry, after enquiring into matters referred to it is required to make its reports thereon to the appropriate government under Section 14 and a Tribunal is required to make an award and submit it to the appropriate government, under Section 15 of the Act (the provisions of which apply only to Tribunals and not to Courts of Enquiry). Section 17 requires the appropriate government to publish the report of the Court of Enquiry and the award of the Tribunal as the case may be, within a certain time. In the case of an award of the Tribunal the appropriate government is required under Section 15(2) subject to certain exceptions which are not material to the case before us, to declare in writing the award to be binding where upon the award becomes binding on parties mentioned in Section 18 of the Act. The point of importance is that though the report of a Court of Enquiry has to be published by the appropriate government there is no provision in the Central Act which would have the effect of making the report of a Court of Enquiry binding. The report upto that stage is merely a collection of relevant materials relating to the matters referred to and the views which the Court may express thereon, having no binding effect on the parties.

The report of the Court of Enquiry cannot, therefore, be regarded as a "decision", within the meaning of Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950. We must, therefore, give effect to the first contention of the respondent and hold the appeal is not competent. In this view the consideration of the second point urged does not arise. Still we think it proper to express our views on it.

Assuming for the time being that the report of the Court of Enquiry on being enforced by the U.P. Government under Section 3(b) of the U.P. Industrial Disputes Act assumed the character of a decision we are of opinion that no appeal lies. Section 7(1) of the Industrial Disputes (Appellate Jurisdiction) Act, 1950 requires that the award or decision against which an appeal would lie on the grounds or matters mentioned in clauses (a) and (b) thereof must be the award or decision of a *Tribunal*. The Term "Tribunal" has been defined in Section 2(c) of the Act. Admittedly the Court of Enquiry appointed in this case does not fall within clauses (i) and (ii) of that section. Nor it falls within clause (iii) thereof, as the Court of Enquiry in this case had not been set up under any law passed by a State Legislature, but was set up under the provisions of the Central Act—a law passed by the Indian Legislature. We accordingly hold that the second point urged by the respondent is also a sound one.

The result is that this appeal is dismissed as being incompetent. The appellant must pay costs to the respondent, which we assess at Rs. 50/-.

J. N. MAJUMDAR,
Chairman.

R. C. MITTER,
Member.

G. P. MATHUR,
Member.

Appeal No. 114 of 1950

The Kundan Sugar Mills, Amroha, Dist. Moradabad, U.P.—*Appellants.*

Vs.

The Kundan Sugar Mills Labour Union, Amroha, Dist. Moradabad, U.P.—*Respondents.*

In the matter of an appeal against the award of Shri J. Prasad, Adjudicator & Conciliation Officer, Uttar Pradesh appointed under G.O. No. 176(ST)/XVIII, dated 12th January 1950 in respect of the Industrial dispute between the Kundan Sugar Mills, Amroha, Dist. Moradabad U.P. and its employees.

Lucknow, the 29th November, 1950

Present :

Mr. J. N. Majumdar, Chairman.

R. C. Mitter, Kt, Member.

Mr. G. P. Mathur, Member.

Appearances :

For Appellants—Mr. Kartar Singh, Labour Officer, with Mr. Ranbir Singh, Manager.

For the Respondents—Mr. Deo Dutt Tyagi, General Secretary, Kundan Sugar Mills Labour Union.

State—Uttar Pradesh.

Industry—Sugar.

DECISION.

This appeal relates to the non-employment of 19 workmen by the appellant Mills in the crushing season of 1949-50. The dispute before the Adjudicator related to 21 workmen. In making his adjudication he divided the workmen into two groups. In group I, he placed four workmen and considered their cases individually and in group II he placed the remaining 17 workmen whose case rested on common grounds and dealt with their cases collectively. By his award he upheld the contention of the Mills in respect of two workmen in Group I, but decided that non-employment of the remaining two workmen in Group I, *viz.*, Amin Bux and Nathu Dobi and 17 workmen in Group II consisting of 6 masons, 1 jamadar, 1 bhisti and 9 coolies, was unjustifiable. He accordingly directed the Mills to pay them compensation in the shape of either full wages or part thereof for the crushing season of 1949/50. He further held that for the purpose of continuity of service they are to be deemed to have been present in that season. Against this decision the appeal has been preferred by the Mills.

As to Amin Bux who was a fitter the Mills' case was that he was a temporary workman, but he maintained that he was a seasonal one. The Adjudicator held that the Mills failed to prove that he was a temporary workman and in that view made his award which we have mentioned above.

The admitted facts of the case are as follows :—

He was first appointed a fitter on the 4th November, 1946 a few days before the crushing season commenced and continued to be in employment for the whole of that crushing season, 1946-47. He did not report himself for duty within seven days of the commencement of the next crushing season (1947-48), nor did he apply for leave of absence. The Management thereupon refused to take him in with the result that an industrial dispute was raised by the Labour Union on his behalf before the Regional Conciliation Board (Sugar), Meerut. The President of Industrial Court (Sugar), Lucknow on appeal (Appeal No. 11 of 1948) in his award given on the 29th April, 1949 held that he was absent without leave for seven days and so he was not entitled to any relief. The Mills again engaged him as a fitter on the 26th July, 1948 and he continued to be engaged from that date till 11th April, 1949 when he was discharged. The crushing season began on the 29th November, 1948 and ended on the 7th April, 1949. In our judgment he cannot claim to be a seasonal workman on the basis that he had been employed as a seasonal workman on the 4th November, 1946, as there was a break in his service during the crushing season of 1947-48. It must be taken that his appointment on the 26th July, 1948, was a new appointment. The question, therefore, is what was the nature of this appointment.

The character of an appointment must *prima facie* depend upon the nature of the job in which the workman is put in. The job of a fitter is *prima facie* not of a temporary or casual nature. The fitter would, therefore, be *prima facie* taken to be a permanent workman or at least a seasonal one. But there may be cases which an additional hand is required for that job, and if it is proved by the Management, a fitter would be a temporary workman. To discharge this onus the Management produced his signed application that he made on the 26th July, 1948. There is nothing in the body of the application or in his acceptance to show that he offered himself to be engaged and was engaged on a temporary basis. The Chief Engineer made the appointment on the 26th July, 1948, by an order which runs as follows :—

"He may be taken in on the terms and conditions *before mentioned*" and then put his signature after it. After his signature and at the bottom of the page there appears a manuscript writing admittedly in different ink and in different hand running as follows :—

"The workman is appointed as a temporary fitter". This line was not authenticated by any signature. The

Adjudicator did not act upon it and observed that as the Management had not adduced any other evidence the workman was to be taken as a seasonal worker and not a temporary one.

Mr. Kartar Singh appearing for the appellants says that other documentary evidence was produced by the Mills before the Adjudicator. The record of the Adjudicator does not bear him out. Further, the finding of the learned Adjudicator has not been challenged in this appeal on the ground that he did not take into consideration other documentary evidence produced in support of the Mills' contentions. Taking into consideration these facts, we could not go upon his statement but have had to proceed on the record as it stands, and on the evidence we could not come to any conclusion other than that to which the Adjudicator had arrived. We should, however, observe that this is not the first appeal in which statement about production of documentary evidence before the original Tribunal but not borne out by the record has been made. To avoid any controversy we think it is desirable that the original Tribunal, be it the Regional Conciliation Board or the Tribunal of the Adjudicator should maintain the records in a better form by making a list of documents produced by parties.

As to the case of Nathu Dhobi : He was not taken in by the Management on the ground that he absented himself without leave for more than seven days. It, however, appears that he did send an application for leave from the 1st to the 25th December, 1949 by registered post from the place where he was staying then. That application bears a thumb impression and a signature of one Morvi, near the thumb impression. The contents of the application show that the application was for leave of Nathu Dhobi on the ground that he had to attend a litigation of his. No order was passed on his application. Nathu, however, did not stay out till the 25th December but joined on the 8th of that month.

The contention of the appellants is that this application is to be disregarded as it was not written on the printed application form of the Mills, that it had not been signed by Nathu and had not been presented by him in person. We do not consider any of these contentions to be of substance. We maintain the award passed in his favour by the Adjudicator.

With regard to the remaining 17 workmen whose cases were dealt together by the Adjudicator the case of the Management is that they were temporary hands while the contention of the Union is that they were seasonal ones. The Adjudicator has pointed out that in a previous industrial dispute concerning these workmen claimed the status of permanent workmen, but the Management contended that they were seasonal ones. Thus an admission was made by the Management that they were seasonal workmen. This admission has not been explained away by the Mills. We, therefore, hold in concurrence with the Adjudicator that they were seasonal workmen.

The result is that this appeal is dismissed with cost assessed at Rs. 50/-.

J. N. MAJUMDAR,
Chairman.

R. C. MITTER,
Member.

G. P. MATHUR,
Member.

MINISTRY OF WORKS PRODUCTION AND SUPPLY

Directorate General of Supplies and Disposals

NOTIFICATIONS

New Delhi, the 13th August 1951

No. A-12/14(309)/DGS&D.—Mr. B. L. Chopra, an Ordnance Officer (Civilian) in the office of the Director, United States Transfers Directorate (USASS), Calcutta, has been granted earned leave for 27 days from the 23rd July, 1951, with permission to affix Sundays on the 22nd July, 1951, and 19th August, 1951, to his leave.

A. R. KAPUR,
for *Director General of Supplies and Disposals.*

New Delhi, the 13th August 1951

No. 653.—Mr. B. N. Majumdar, Inspecting Officer (Engg.) in the Directorate General of Supplies & Disposals at Calcutta was granted earned leave for 11 days from 2nd July 1951 to 12th July 1951 with permission to prefix Sunday on 1st July 1951 to the leave.

A. R. KAPUR,
Director (Administration & Co-ordination),
for *Director General of Supplies & Disposals.*

MINISTRY OF COMMERCE AND INDUSTRY

NOTIFICATIONS

Bombay, the 10th August 1951

No. TCS-IV/CTM/4.—In exercise of the powers conferred upon me by sub-clause (e) of clause 2 of the Cotton Textiles (Control of Movement) Order, 1948, I hereby direct that the following further amendment shall be made in the Textile Commissioner's Notification No. 15-Tex.1/49, dated the 25th March, 1950, namely :—

In the table appended to the said Notification in entry No. 22, for the words "and all Inspectors and Sub-Inspectors of Civil Supplies" the words "all Inspectors and Sub-Inspectors of Civil Supplies and all Enforcement Inspectors and Sub-Inspectors" shall be substituted.

No. TCS-IV/CTM/5.—In pursuance of sub-clause (e) of clause 2 of the Cotton Textiles (Control of Movement) Order, 1948, I hereby direct that the following further amendment shall be made in the Textile Commissioner's Notification No. 15-Tex.1/49(ii), dated the 25th March, 1950, namely :—

In the table appended to the said Notification after entry No. 7A, the following shall be inserted, namely :—

"7B. Shri Sunder Lal Bhargava, Assistant Director of Civil Supplies (General), Delhi."

No. TCS-IV/TP/4.—In pursuance of sub-clause (i) of Clause 3 of the Cotton Textiles (Transmission by Post) Prohibition Order, 1951, I hereby direct that the following further amendment shall be made in the General Permission, dated the 19th May, 1951, contained in the Textile Commissioner's Notification No. S.R.O. 756, dated the 19th May, 1951, namely :—

In paragraph 3 of the said General Permission, after item No. (xiii) the following shall be added, namely :—

"(xiv) Hosiery delivered for transmission at any post office in the Ludhiana district or the Jullundur district of the Punjab."

T. SWAMINATHAN,
Textile Commissioner.

SURVEY OF INDIA

NOTIFICATION

Mussoorie, the 9th August 1951

No. 2136/P.F.—Shri M. R. Nair, Superintending Surveyor, Survey of India is granted under the Fundamental Rules leave on average pay on M.C. for one month from 2nd July 1951.

There is no likelihood of the officer returning to a post carrying a lower rate of pay on termination of the leave. The officer is likely, on the expiry of the leave, to return to duty at Bangalore, from where he proceeded on leave.

I. H. R. WILSON, *Colonel,*
Offg. Surveyor General of India.

GEOLOGICAL SURVEY OF INDIA

NOTIFICATION

Calcutta-13, the 10th August 1951

No. 10985.—Mr. K. Ganeshan, A.I.S.M. A.R.S.M., B.Sc. (London), is appointed to officiate as Assistant Geologist in the Geological Survey of India on Rs. 275 p.m. in the scale of Rs. 275—25—500—E.B.—30—650 with effect from the forenoon of the 8th August, 1951, until further orders.

M. S. KRISHNAN,
Director,
Geological Survey of India.

DIRECTORATE GENERAL, ALL INDIA RADIO

NOTIFICATIONS

New Delhi, the 11th August 1951

No. 1(1/14)-AII/51.—Mr. K. R. Sundar Rajan, Correspondent (Kashmir), News Services Division, All India Radio, is granted earned leave for 42 days combined with half-pay leave for 20 days, with effect from the 15th May, 1951.

The 11th August 1951

No. 10(14)EII/51.—Mr. S. S Iyer, resumed charge as officiating Deputy Maintenance Engineer,, All India Radio, New Delhi, on the forenoon of the 11th June 1951, on return from earned leave for 20 days.

The 14th August 1951

No. 1(15)-AII/51.—Mr. Asoke Gupta is appointed to officiate as Assistant News Reporter, News Services Division, All India Radio, with effect from the 1st August, 1951

S. BANERJEE,
Deputy Director of Administration,
for *Director General.*

PRESS INFORMATION BUREAU

NOTIFICATIONS

New Delhi-2, the 17th August 1951

No. F. 18/37/48-Est.—Shri G. L. Raval, temporary Assistant Information Officer, Press Information Bureau, has been granted earned leave for 21 days from August 17 1951 to September 6, 1951.

No. F. 19/3/51-Est.—Shri A. M. Abdul Hamid, temporary Assistant Information Officer, was granted extension of earned leave up to July 7, 1951. He resumed duty as Assistant Information Officer in the New Delhi, office of the Bureau on the afternoon of July 21, 1951 after availing himself of joining time from July 8 to 21, 1951.

B. L. SHARMA,
Principal Information Officer.

DIRECTORATE GENERAL OF HEALTH SERVICES

NOTIFICATION

New Delhi-2, the 11th August 1951

No. 5-12/51-PHIII.—Dr. (Miss) S. Khambata, M.B.B.S., was appointed as temporary Lady Doctor, Port Health Organisation, Bombay on Rs. 275 p.m. in the scale of Rs. 275—25—500 from the forenoon of the 2nd June, 1951 to 22nd June, 1951 *vice* Dr. (Mrs.) T. D. Bharucha, proceeded on leave.

R. D. VOHRA,
for Director General of Health Services.

CENTRAL TRACTOR ORGANISATION

NOTIFICATION

New Delhi, the 8th August 1951

No. F. 3-23/51-E.I.—Shri H. L. Bahl, temporary Assistant Director of Stores, resumed charge of his post on return from leave on the 1st August, 1951, forenoon. The un-expired portion of earned leave from the 1st August, 1951, to the 5th August 1951 granted to him *vide* this office notification of even number, dated the 5th July 1951, is hereby cancelled.

P. N. BHANDARI
Chairman.

INDIAN AGRICULTURAL RESEARCH INSTITUTE

NOTIFICATION

New Delhi, the 10th August 1951

No. F. 7/17392.—Dr. M. K. Hingorani is confirmed in the post of Assistant Plant Bacteriologist, I.A.R.I., with effect from 1st June 1951.

B. P. PAL,
Director

INDIAN VETERINARY RESEARCH INSTITUTE

NOTIFICATION

Izatnagar, the 14th August 1951

No. 8075/G.—Dr. P. Bhattacharya, M.Sc., Ph.D., Officer-in-Charge, Animal Genetics Section, Indian Veterinary Research Institute, Izatnagar, is granted earned leave for 32 days from the 8th August, 1951, to the 8th September, 1951, with permission to suffix Sunday, the 9th September, 1951.

S. DATTA,
Director.

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Office of the Director General, Posts and Telegraphs

NOTIFICATION

New Delhi, the 10th August 1951

No. STA.158-1/50.—Shri K. K. Advani, Deputy Director, Telegraph Traffic, Bombay, is granted leave on average pay for 2 months with effect from 3rd July 1951.

NOTICE

New Delhi, the 25th August 1951

1. (i) A competitive examination for the recruitment of candidates for appointment as Engineering Supervisors will be held in Calcutta, Cauhati, Patna, Bombay, Poona, Nagpur, Madras, Tiruchirapalli, Delhi, Agra, Lucknow, Ambala and Cuttack, commencing on the 17th December 1951 under the rules published in the Gazette of India, dated the 25th August 1951.

(ii) A qualifying Trade Test for recruitment of departmental candidates only for appointment as Engineering Supervisors will also be held at all Divisional Headquarters on 10th December 1951 under the rules quoted above.

2. Engineering Supervisors are liable for field service in times of war or national emergency within the limits of India.

Note.—The names of all candidates who are selected for training as Engineering Supervisors will be published in the Press and they will be informed individually of their selection by the Heads of Circles. A copy of the list of only such candidates will be supplied to all candidates.

3. A candidate seeking admission to the competitive examination or Trade Test must apply to the Head of the Circle concerned on prescribed form of application which must reach that authority on or before the 15th October 1951 accompanied by the necessary documents. No application received after that date will be considered.

4 Copies of the Rules, Application Form, etc., should be obtained from any of the following officers :—

(1) Postmaster-General, West Bengal Circle, Calcutta.
(2) Postmaster-General, Bihar Circle, Patna.
(3) Postmaster-General, Bombay Circle, Bombay.
(4) Postmaster-General, Central Circle, Nagpur.
(5) Postmaster-General, Madras Circle, Madras-2.
(6) Postmaster-General, East Punjab Circle, Ambala.
(7) Postmaster-General, Uttar Pradesh Circle, Lucknow.
(8) Director of Posts and Telegraphs, Assam Circle, Shillong.
(9) Director of Posts and Telegraphs, Orissa Circle, Cuttack.

5. No allegation that an application form or a letter respecting such form has been lost or delayed in the post, will be considered, unless the person making such allegation produces a Post Office Registration receipt. Candidates who delay their applications or their requests for forms, until a late date will do so at their own risk.

6 The competitive examination will be confined to :—

(a) Departmental candidates who have not more than 9 year's permanent service in their respective grades on the 1st January 1951, and

(b) Outside candidates who were born not earlier than the 2nd January 1927 and not later than the 1st January 1934. In the case of Scheduled Caste or Scheduled Tribe candidates or *bona fide* displaced candidates from Pakistan the upper age limit is relaxed by three years, i.e. candidates born not earlier than 1924 are eligible. In the case of scheduled caste or Scheduled Tribe candidates who are also *bona fide* displaced persons from Pakistan the upper age limit is relaxed by six years.

Note 1.—Temporary officials who have rendered not less than 3 years continuous service as Departmental Candidates will be eligible to appear in the examination as Departmental Candidates.

Note 2.—The age limits prescribed cannot be relaxed.

7. One hundred and fifty vacancies are likely to be filled on the results of this examination. The percentage of vacancies reserved is as follows :—

(i) 50 per cent. for departmental candidates recruited through the Trade Test,

(ii) 25 per cent. for departmental candidates recruited through the competitive examination, and

(iii) the remaining 25 per cent for outside candidates.

KRISHNA PRASADA,
Director General.

OFFICE OF THE DIRECTOR GENERAL OF CIVIL AVIATION

NOTIFICATION

New Delhi, the 14th August 1951

No. EA15-1/51.—Shri L. A. Lobo, Assistant Aerodrome Officer, Ahmedabad was granted earned leave for 41 days with effect from the 1st May 1951.

D. CHAKRAVERTI,
for Director General of Civil Aviation.

INDIA METEOROLOGICAL DEPARTMENT

NOTIFICATIONS

New Delhi-3, the 11th August 1951

No. E.(I).03339.—Mr. C. A. George, B.Sc. (Hons.), officiating Professional Assistant, has been appointed to officiate, until further orders, as Assistant Meteorologist in the Indian Meteorological Service, Class II (Central Service, Class II), with effect from the forenoon of 25th July 1951. Mr. George has been posted to the Regional Meteorological Centre, Calcutta.

The 14th August 1951

No. E(I).00554.—Mr. S. S. Lal, M.Sc. (Lond.), D.I.C. (Lond.), Meteorologist Grade I, on being relieved of his duties in the Regional Meteorological Centre, Nagpur, on the afternoon of the 24th July 1951, was transferred to the Meteorological Office, Poona, where he joined duty on the afternoon of the 2nd August 1951.

No. E(I).03290.—On return from leave, Mr. G. R Ramanna, M.Sc., resumed duty as Offg. Assistant Meteorologist in the Meteorological Office, Jodhpur, on the forenoon of the 23rd July, 1951.

V. V. SOHONI,
Director General of Observatories

CENTRAL EXCISE COLLECTORATE

NOTIFICATION

Calcutta, the 10th August 1951

No. 19.—Shri S. C. Neogy, Officiating Superintendent of Central Excise, was granted earned leave for 44 days from 27th April 1951 to 9th April 1951.

J. W. ORR,
Collector of
Central Excise and Land Customs, Calcutta.

NOTICE

New Delhi, the 13th August 1951

The undermentioned goods which have been lying uncleared at the customs House for over four months will be sold through a public auction to be held on the 27th August, 1951, at 11 A.M. at the Customs House (Talkatora Barracks), New Delhi, subject to the reserve prices fixed by the customs authorities. No person will be allowed to take delivery of any goods for which a possession licence is required under the law without producing such licence before the customs authorities. The goods will be open to view from the 25th August, 1951. The Collector reserves the right to withdraw any item from the auction, if considered necessary without giving any prior notice.

List of Foreign and Miscellaneous Goods Seized (1948) to be Disposed of under Sec. 88 of S.C.A.

Serial No.	Ref. or file No.	Particulars of goods.
1	111/48	2 pcs. gray cloth 10½ yds. 2 pcs. ticking cloth 8½ yds.
2	120/48	1 piece art silk 4½ yds.
3	130/48	1 piece netting cloth in form of a shirt.
4	178/48	4 pcs. printed voil 18 yds. 1 pc. shirting 2¼ yds. 1 pc. malmul 1¾ yds. 2 pcs. parachute cloth
5	219/48	6 pcs. shirting cloth 8½ yds. 8 pcs. printed cloth 37 yds. 1 pc. long cloth 4½ yds. one bag.
6	128/48	1 pc. art silk 1¼ yds. 4 pcs. printed cloth 11⅓ yds. 3 pcs. cotton cloth printed 13½ yds.
7	186/48	4 Art silk pieces 19 yds. 9 cotton cloth pcs. 49 yds.
8	127/48	2 pcs. white cloth 4¼ yds. 1 pc malmul 4⅔ yds. 1 pc. voil 2·1/3 yds. 1 pc. printed cloth 2 1/3 yds 3 ladies sh rt. 1 white salwar. 6 small payjamas one container used suite case.
9	102/48	1 pc. malmul 6½ yds.
10	107/48	1 pc. malmul 3 yds. 1 pc. doria 5½ yds. (Voil).
11	109/48	10 pcs. printed cloth. 3 pcs. shirting cloth.
12	175/48	14 cigarette lighters.
13	77/48	9 pcs. cotton netting 11½ yds.
14	189/48	4 cotton cloth of different lengths 20 yds.
15	140/48	6 perachut cloth.
16	99/48	2 pcs. shirting.
17	190/48	3 doz. watch straps.
18	226/48	1 quilt. 4 pcs. of printed cloth 19 yds.
19	83/48	one holder. one quilt.
20	201/48	5 boxes Hinges for jewellery box. 2 pcs. fine voil 5½ yds. 2 pcs. printed cloth 4 yds.
21	222/48	Motor car parts. (*i*) Distributor cap. .. 3 (*ii*) Motor .. 1 (*iii*) Roller .. 2 (*iv*) Small fittm .. 6 (*v*) Battary testing belt .. 1 (*vi*) Chuch plate .. 2

List of Foreign and Miscellaneous Goods Seized (1949) to be Disposed of under Sea Customs Act

Serial No. 1	Ref. or file No 2	Particulars of goods. 3
1	3/49	Two wrist watches.
2	5/49	One electric Fan
3	23/49	Two packets of snuff 10 lbs.
4	30/49	Cigarettes in packets (500).
5	37/49	8 big shirts. 12 small shirts. 3 small shirts (2 art silk). 8 big salwars (1 cotton). 1 small salwar.
6	44/49	1 pc long cloth 7/8 yds. 1 pc Zab 4 yds. 1 pc. Art silk 7½ yds 1 pc. art silk 4½ yds. 1 pc. shirting 1½ yds. art silk
7	49/49	10 frocks. 7 salwars.
8	55/49	6 Waist coats 7 frocks (silken and cotton). 1 silk shirt. 1 art silk turban. 1 pc. cloth 1¼ yds.
9	57/49	6 shirts. 2 ladies dresser. 3 salwars. 1 coat (woolen) 1 pc. art silk (yellow). 3 yds. 2 pcs. cloth black 6 yds. 3 pcs. cloth cotton 10 yds.
10	60/49	3 salwars. 12 shirts.
11	61/49	13 salwars 10 shirts 1 *waist* coat 2 small shirts. 1 frock. 2 small salwars. 2 sheets. 1 pc. black *malmul* 2 yds. 2 longies.

1	2	3
12	63/49	11 shirts. 8 salwars.
13	65/49	8 shirts.
14	70/49	Silk cloth 10¼ yds. Cotton cloth 42 yds. shoes 2 pairs.
15	71/49	Ladies shirts .. .. 6 Gent's shirts .. .. 8 Waist coat .. 2 Salwars 4
16	78/49	*Cut pieces* 2½ yds. white shirting. 6¾ yds. long cloth. ½ yd. poplin cloth. 2 yds. voil white. ½ yd. white cloth. 2 pcs. dhoties .. . .. 2½ yds. Woolen cloth .. .. .. 5½ yds. 2 pcs. art silk . .. 1 yd. Art silk . .. . .. 9 yds. Cut pcs (N.C.V.) .. .. .. 3 lbs. Printed shirting .. .. . 2 yds. Coat lining .. .. .. 1¼ yds. White silk .. .. 1 yd. Misc. stitched clothes
17	82/49	Shirting . .. . 2½ yds. 2 pillow covers.
	84/49	Sarees .. .. 4 Half dhoti .. .. 1 Petti Coat . .. . 2 Small salwars .. .. . 2 Banyans .. .. 2 Salwar (large) .. .. .. 1 Frocks .. .. 6 Dupatta .. .. 1 Small shirts .. .. 4 3 pcs malmul .. .. .. 3 yds. 2 pcs. chief voil . .. .. 2 yds. 1 pc. malmul . .. .. ¼ yds. Voil .. . . 1 yd. Incomplete underwear .. . 2 Shirting Cloth .. .. . 1 yd.
19	85/49	Cotton cloth .. .. . 26 yds.
20	87/49	2 pcks. silk .. .. 11 yds. 1 pc. cotton cloth .. .. 2¼ yds. 6 Art silk pcs. .. .. .. 12¼ yds. 6 Cut pcs. N.C.V.
21	90/49	Cotton pcs. goods .. .. 15 yds. 2 frocks
22	110/49	1 pc. cotton cloth .. .. .. 4¾ yds. 2 pcs. art silk .. .. .. 9½ yds.
23	122/49	3 pcs art silk .. . . 3¾ yds.
24	134/49	4 pcs. art silk .. .. . 4½ yds. 1 silk frocks 1 dupatta. 1 silver bangle.
25	7/49	3 doz. Thermometers.
26	127/49	1 box advertising material.
27	88/48	One dagger (knife)
28	..	One sword (Kirpan).
29	94/49	2 pairs shoes. 2 pairs slippers. 6 dupattas. 5 shirts. 4 silken salwars.
30	110/49	10 seers of sulpher. 7 tolas musk. ½ tola amber. Small quantity of seeds (motias).

List of Articles to be Auctioned under Sec. 88 of Sea Customs Act

Serial No.	Particulars of the goods.
1.	Surgical Instruments and Syringes, etc.
2.	Scientific appliance, glass tubes, etc.
3.	Hardware Padlocks, Handsome Blades, Hair clippers, Ropes and chains, Steel Balls, etc.
4.	Sports goods— 23 Hockey Sticks. 67 Foot ball covers. 10 lbs. Tennis Guts.
5.	Toys.
6.	Cutlery-knives and scissors, etc.
7.	Wearing apparel, Table cloth and Napkins.
8.	Radio Parts condensers and capacitators, etc. Musical Instruments Parts and sound boxes.
9.	Agricultural Implements 10 chaff cutting blades.
10.	Advertising leaflets and labels etc.
11.	Cycle parts.
12.	Aircraft rubber tube.
13.	Cigars and cigarettes.
14.	Imitation jewellery.
15.	Glassware, Thermosflashet.
16.	Artificial teeth.
17.	One day alarm clock.
18.	Plastic woven fabric.
19.	Electric Bulbs, etc. and flashlite bulbs.
20.	Fountain pen.
21.	Sewing Machine body and parts.
22.	Shoes for children.
23.	Honey
24.	Hosiery socks and vests, etc.
25.	Knitting wool.
26.	Paper manufacture garlands and old News paper.
27	Machinery parts, Plumber block with adaptable Ball Bearing, etc
28.	Exposed cinema films.
29.	Printing Ink
30	Chinaware.
31.	4 cigarette lighters.
32.	One coat and one shirt.
33.	Ivory goods worth Rs. 2,000.
34.	10 Tobacco tins. 40 used personal clothings. 1 leather jerkin.
35.	One piece art silk 4 yds.
36.	Cigarettes = 3,220.

Collector,
Central Excise Collectorate, Delhi.

NARCOTICS DEPARTMENT

NOTIFICATION

New Delhi, the 11th August 1951

No. 4.—Shri Lachman Dev, Assistant Manager, Opium Factory, Ghazipur, has been granted leave for sixty days with effect from 16th July, 1951.

2. Certified that Shri Lachman Dev is likely to be posted in a place in which Dearness Allowance is in vogue.

A. C. WHITCHER,
Narcotics Commissioner

CENTRAL PUBLIC WORKS DEPARTMENT

NOTIFICATIONS

New Delhi, the 14th August 1951

No. 02119EI.– Mr Ilam Chand, a permanent Horticultural Section Officer, was appointed to officiate as Assistant Superintendent, Horticultural Operations, New Delhi, with effect from the forenoon of the 14th July 1951, until further orders.

No. 07206EI.—Shri B. Sadhuram, Assistant Engineer, formerly attached to the Rehabilitation Division No. I, New Delhi, and at present attached to the Water Works Division, New Delhi, was granted extension of earned leave for 5 days from the 27th to 31st July 1951, in continuation of 84 days earned leave already sanctioned to him *vide* this Office Notification No. 07206EI, dated the 14th June 1951, and 25th July 1951, respectively.

B. S. PURI,
Chief Engineer.

ESTATE OFFICE

NOTICES

New Delhi, the 10th August 1951

No. 39-E.O.VII/DP(Enq)/51.—Whereas in my opinion it is necessary to requisition the premises specified in the Schedule hereto appended for a public purpose, *viz.*, for the proper and efficient functioning of the Government of India.

Now, therefore, in exercise of the powers conferred by sub-sections (2) (b) and (3) of Section 3 of the Delhi Premises (Requisition and Eviction) Act, 1947, No. XLIX of 1947, I, L. G. Selvam, Estate Officer to the Government of India, being the competent authority under the said Act do hereby direct that the landlord, occupier or the person in possession of the premises specified in the

Schedule hereto shall not without my permission dispose of by way of lease, sale or otherwise, or structurally alter the premises, and I hereby call upon the landlord and the tenant or the person in possession of the said premises to show cause within seven days from the service of this notice why the said premises should not be requisitioned.

Schedule

Shop No. M-42, Block "M" Ground Floor, Cannaught Circus, New Delhi, occupied by M/s. S. M. G. Beaty, complete with all appurtenances.

To

1. M/s Ram Kishan Sitaram, Capital Estate Agency, Near Spencers, Connaught Place, New Delhi.
2. M/s. S. M. G. Beaty, Near Snow White, Connaught Place, New Delhi.
3. Whom it may concern (to be affixed to the premises).

No. 40-E.O.VII/DP(Enq)/51.—Whereas in my opinion it is necessary to requisition the premises specified in the Schedule hereto appended for a public purpose, *viz.*, for the proper and efficient functioning of the Government of India.

Now, therefore, in exercise of the powers conferred by sub-sections (2) (b) and (3) of Section 3 of the Delhi Premises (Requisition and Eviction) Act, 1947, No. XLIX of 1947, I, L. G. Selvam, Estate Officer to the Government of India, being the competent authority under the said Act do hereby direct that the landlord, occupier or the person in possession of the premises specified in the Schedule hereto shall not without my permission dispose of by way of lease, sale or otherwise, or structurally alter the premises, and I hereby call upon the landlord and the tenant or the person in possession of the said premises to show cause within seven days from the service of this notice why the said premises should not be requisitioned

Schedule

Portion of Flat No. 44, Regal Building, First Floor, consisting of Ball room above the porch Bakery room, the Office room complete with all appurtenances, Connaught Circus, New Delhi, formerly occupied by M/s. Devicos, New Delhi.

To

1. M/s. Bhagwant Singh Daljit Singh, No. 1-A, Queensway, New Delhi.
2. Nawal Halim Jang C/o M/s. Davicos, above Regal Cinema, New Delhi.
3. Shri Jagat Dish Bhargava, B.A., LL.B., Advocate, Official Receiver, Kashmiri Gate, Delhi.
4. The Director, Institute of Foreign Languages, Regal Building, New Delhi.
5. To be affixed to the premises.

No. 41-E.O.VII/DP(Enq)/51.—Whereas in my opinion it is necessary to requisition the premises specified in the Schedule hereto appended for a public purpose, *viz.*, for the proper and efficient functioning of the Government of India.

Now, therefore, in exercise of the powers conferred by sub-sections (2) (b) and (3) of Section 3 of the Delhi Premises (Requisition and Eviction) Act, 1947, No. XLIX of 1947, I, L. G. Selvam, Estate Officer to the Government of India, being the competent authority under the said Act do hereby direct that the landlord, occupier or the person in possession of the premises specified in the Schedule hereto shall not without my permission dispose of by way of lease, sale or otherwise, or structurally alter the premises, and I hereby call upon the landlord and the tenant or the person in possession of the said premises to show cause within seven days from the service of this notice why the said premises should not be requisitioned.

Schedule

Shop No. M-46, Ground Floor, "M" Block Connaught Circus, New Delhi, Occupied by M/s Krishna Motor Garages, complete with all appurtenances.

To

1. M/s. Krishna Motor Garages, Shop No. M-46, Block "M", Connaught Circus, New Delhi.
2. Mr. Suraj Narain, 11, Bazar Lane, New Delhi.
3. Whom it may concern. (To be affixed to the premises).

No. 42-E.O.VII/DP(Enq)/51.—Whereas in my opinion it is necessary to requisition the premises specified in the Schedule hereto appended for a public purpose, *viz.*, for the proper and efficient functioning of the Government of India.

Now, therefore, in exercise of the powers conferred by sub-sections (2) (b) and (3) of Section 3 of the Delhi Premises (Requisition and Eviction) Act, 1947, No. XLIX of 1947, I, L. G. Selvam, Estate Officer to the Government of India, being the competent authority under the said Act do hereby direct that the landlord, occupier or the person in possession of the premises specified in the Schedule hereto shall not without my permission dispose of by way of lease, sale or otherwise, or structurally alter the premises, and I hereby call upon the landlord and the tenant or the person in possession of the said premises to show cause within seven days from the service of this notice why the said premises should not be requisitioned.

Schedule

Corner Shop between Nos. M-8 and M-9 Ground Floor 'M' Block, Connaught Circus, New Delhi, formerly occupied by Mining and Chemical Industries complete with all appurtenances.

To

1. Pt. Man Mohan Nath Dar, Mohan Brothers, Connaught Place, New Delhi.
2. Dr. Kedar Nath, Avrcliff, Cart Road, Simla.
3. M/s. Mining and Chemical Industries, "M" Block Connaught Circus, New Delhi.
4. Nath Commercial Co., Ltd., Shop No. M-8., Connaught Circus, "M" Block, New Delhi.
5. Whom it may concern (to be affixed to the premises)

L. G. SELVAM,
Estate Officer to the Government of India.

OVERSEAS COMMUNICATIONS SERVICE

NOTIFICATION

Bombay, the 11th August, 1951

No. GG.6/9.—The following permanent Assistant Engineers have been granted earned leave as indicated against each :—

Sl. No	Name	Station	Period From	Period To	No. of	Remarks
(i)	Mr N J Joshi ..	C. T. O. Bombay	7-7-51	13-7-51	7	Permitted to prefix the holiday on 6th July 1951
(ii)	Mr N. F. Allana	Do.	30-7-51	15-9-51	48	Permitted to suffix Sunday the 16th Sept 1951
(iii)	Mr. V. P. Oldfield	Kirkee	3-8-51	17-8-51	15	

2. On return from leave Mr. A. S. Khadilkar, has resumed charge of his duties as Assistant Engineer (on probation) at Kirkee with effect from the 1st August 1951 (F.N.).

S. R. KANTEBET,
General Manager.

OFFICE OF THE COMMISSIONER OF INCOME-TAX

CORRIGENDUM

Lucknow, the 8th August 1951

No. 42-87/51/12861.—Insert the words "D-Ward, Agra was transferred to be the I.T.O." between the words 'I.T.O.' and 'C-Ward, Dehra Dun" occurring in second and third line of the notification No. 55, dated the 28th June, 1951, printed on page 284 of Part III, Section I of the Gazette of India.

M. D. VARMA,
for Commissioner of Income-tax, Uttar and Vindhya Pradesh, Lucknow

ORDERS

Bombay, the 11th August 1951

No. 25.—In pursuance of sub-section (5) of Section 5 of the Indian Income-Tax Act, 1922, the Commissioner of Income-Tax, Bombay South, directs that with immediate effect, the Income-Tax Officer, Special Survey Circle, Bombay South, Poona, shall and the Income-Tax Officer, Ward-B, Poona, shall not function as Income-Tax Officer, in respect of all persons other than Companies, Salary earners and refund cases, whose place of assessment is in Ward-B, Poona, and whose income according to last completed assessment does not exceed Rs. 10,000.

The 13th August 1951

No. 26.—In pursuance of sub-section (5) of Section 5 of the Indian Income Tax Act, 1922, the Commissioner of Income-Tax, Bombay South, directs that with immediate effect, the Additional Income-Tax Officer, Ward 'A', Bijapur, shall and the Income-Tax Officer, Ward 'A', Bijapur, shall not perform the functions as Income-Tax Officer, in respect of all persons other than companies, salary earners, and refund cases, whose place of assessment is in Ward 'A' Bijapur and whose income according to last completed assessment does not exceed Rs. 10,000.

H. M. PATTANAIK,
Commissioner of Income-tax, Bombay South, Bombay.

DEPARTMENT OF INSURANCE

NOTIFICATION

Simla-4, the 25th August 1951

No. 692-I(1)/46.—It is hereby notified for general information that the registration granted to the following insurer by the Controller of Insurance under section 3 of the Insurance Act, 1938 (IV of 1938) has been cancelled under clause (f) of sub-setcion (4) of the aforesaid section and that the cancellation took effect from the date noted below :—

S. No.—103.

Name and address of the insurer.—The Chandragupta Mutual Life Insurance Company Limited, 29, Rustom Building, Churchgate Street, Fort, Bombay.

Certificate of registration No.—441.

Class of business for which registration was cancelled.—*Life.*

Date from which cancellation took effect.—1st August, 1951.

A. RAJAGOPALAN,
Controller of Insurance.

CENTRAL WATER AND POWER COMMISSION

NOTIFICATIONS

New Delhi, the 10th August 1951

No. 152/71/51-Adm.—In continuation of this Office Notification No. 152/71/51-Adm., dated 7th/8th May 1951 Shri A. S. Bhalla, Accounts Officer, Central Water and Power Commission, is granted one month's extension of leave on medical grounds with effect from the 16th July, 1951.

No. 186/135/51-Adm.—On transfer from the Central Water and Power Commission, Shri G. N. Rao, Extra Assistant Director, is appointed as a temporary Assistant Engineer in the Hirakud Dam Project with effect from the forenoon of 23rd July, 1951.

No. 572/12/50-Adm.—Shri M. P. Chugani Assistant Engineer, Punasa Sub-Division, took over charge of the office of the Assistant Engineer, Tawa Sub-Division on 28th June, 1951 A.N. in addition to his own duties from Shri Natha Singh, Assistant Engineer who on relief reverted as supervisor on the same day.

The 14th August 1951

No. 186/42/51-Adm.—Shri K. V. Rama Rao, Assistant Director, Central Water and Power Commission, was granted earned leave for 55 days with effect from the 11th June, 1951, with permission to prefix Sunday the 10th June, 1951, and Suffix Sunday the 5th August, 1951, respectively to his leave.

This office Notification No. 186/42/51-Adm., dated the 16th June, 1951, is hereby cancelled.

No. 715/5/51-Adm.—Shri S. D. Phansalkar is confirmed as Assistant Research Officer, Central Waterpower, Irrigation and Navigation Research Station, with effect from the 28th June, 1951 (F.N.).

V. S. ANNASWAMI,
Secretary,
Central Water and Power Commission.

EAST INDIAN RAILWAY

NOTIFICATIONS

Calcutta, the 10th August 1951

No. G/Offg/16.—Mr. K. L. Khanna, Offg. Asstt. Personnel Officer (LGS), Howrah, was granted leave on average pay for one month, w.e.f. 2nd June 1951 to 1st July 1951.

No. G/Offg/67.—Mr. G. W. Human, Officiating Assistant Superintendent, Transportation (L.G.S.), Howrah, was granted one month's privilege leave with effect from 24th May 1951 to 23rd June 1951.

K. B. MATHUR,
General Manager.

EASTERN PUNJAB RAILWAY

NOTIFICATION

Delhi, the 8th August 1951

No. 77.—Shri Vishan Dass, a Subordinate of the Stores Department, Eastern Punjab Railway, is appointed to officiate in Class II Service in that Department, on this Railway with effect from 3rd August, 1951.

DAYA CHAND,
Chief Administrative Officer.

UNION PUBLIC SERVICE COMMISSION

Advertisement No. 33

Applications invited for undermentioned posts from Indian citizens and persons migrated from Pakistan with intention of permanently settling in India or subjects of Nepal, Sikkim or Portuguese or French possession in India. Upper age limit relaxable by 3 years for scheduled castes, tribal and aboriginal communities and displaced persons. No relaxation for others save in exceptional cases and in no case beyond three years. Particulars and application forms from Secretary, Union Public Service Commission, Post Box No. 186, New Delhi. Applications for forms must specify name of post. Closing date for applications with treasury receipt or crossed Indian Postal Order for Rs. 7/8/- (Re. 1/14/- for scheduled castes and tribes) *15th September*, 1951 (*29th September*, 1951 *for applicants abroad*). Commission may remit genuinely in indigent and *bona fide* displaced persons' fee. *Separate application with separate fee required for each post.* Candidates abroad may apply on plain paper if forms not available and deposit fees with local Indian Embassy. If required candidates must appear for personal interview.

1. *One permanent Senior Lecturer in Mining Machinery*, Indian School of Mines and Applied Geology, Dhanbad. *Pay* :—Rs. 500—30—800. Higher initial pay up to Rs. 800/- p.m. to specially well-qualified and experienced candidate. *Age* :—Below 40 yeras. *Relaxable for Government servants. Qualifications* :—*Essential*—(i) At least second class degree in Mining Engineering or diploma in Mining Engineering from Indian School of Mines and Applied Geology, Dhanbad. (ii) First class Colliery Manager's certificate of competency. (iii) At least 2 years' practical experience in coal mines including experience in installation. use and maintenance of mining machinery, in addition to minimum period of training required for (ii) above.

2. *Seven Assistant Engineer Consultants, Roads Organisation.* Temporary but likely to become permanent. Other things being equal preference to scheduled castes candidate. *Pay* :—Rs. 350—350—380—380—30—590—E. B. 30—770—40—850. Higher initial pay up to Rs. 500/- p.m. to specially well-qualified and experienced candidate. *Age* :—Between 30 and 36 years. *Relaxable for Government servants. Qualifications* :—*Essential*—(i) Degree in Civil Engineering of recognised University or equivalent. (ii) About 5 years' experience under Government or

private employment equivalent to that of Assistant Engineer in Public Works Department in actual construction and maintenance of roads and of bridge construction including R.C.C. construction.

3. *One Assistant Engineer Grade I, Roads Organisation.* Temporary but likely to become permanent. Other things being equal, preference to scheduled caste candidate. *Pay* :—Rs. 275—25—500—E.B.—30—650—E.B.—30—800. Higher initial pay up to Rs. 400/- p.m. to specially well-qualified and experienced candidate. *Age* :—Between 30 and 35 years. *Relaxable for Government servants. Qualifications* :—*Essential*—(i) Degree in Civil Architecture or Mechanical Engineering of recognised Engineering of recognised University or equivalent, (ii) About 3 years' practical experience in executive charge of roads, buildings or irrigation works or equivalent experience. For one post experience in Quantity Surveying or Architecture accepted.

5. *One Deputy Superintendent (Power House), Fertilizer Project, Sindri.* Permanent but appointment made on five year agreement basis mutually extendable. *Pay* :—Rs. 1,500—60—1,800. Pay more than maximum of scale granted to specially well-qualified and experience candidate. *Age* :—Not below 35 years. *Qualifications* :—*Essential*—(i) Degree in Electrical Engineering of recognised University or A.M.I.E. (India) or equivalent. Relax-